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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1929~~ 1930

No. ~~498~~ 16

THE STATE OF FLORIDA AND A. S. WELLS, E. S. MATTHEWS, ET AL., ETC., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. ~~494~~ 17

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. ~~495~~ 18

WILSON LUMBER COMPANY OF FLORIDA, APPELLANT,

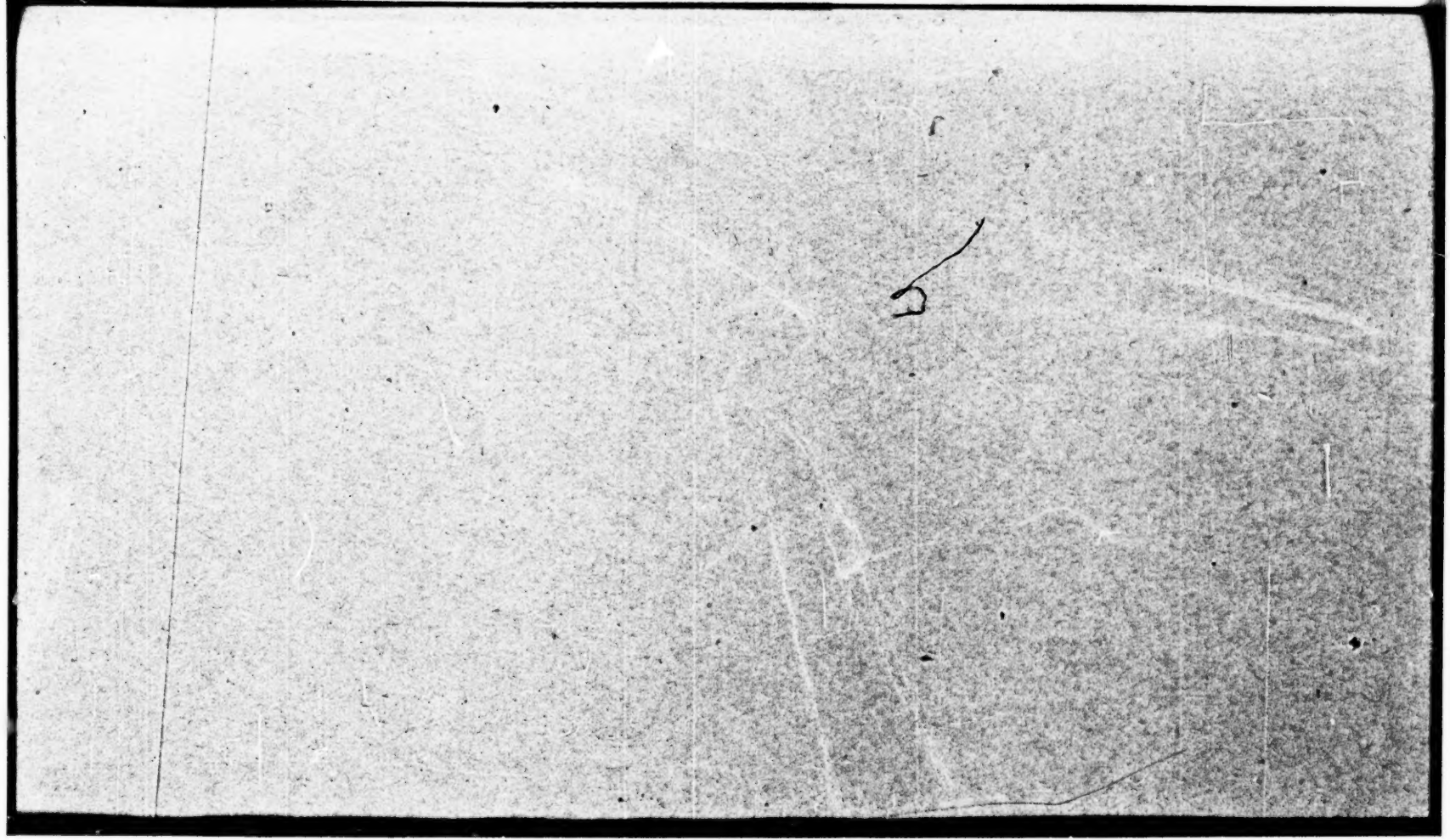
vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

FILED NOVEMBER 27, 1929

(34,624, 34,625, 34,626)



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[fol. 1] [Caption omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT, DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 514

STATE OF FLORIDA and A. S. WELLS, E. S. MATHEWS, and Mamie G. Eaton, as and Constituting Florida Railroad Commission, Petitioners,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

BILL OF COMPLAINT—Filed Nov. 27, 1928

To the Honorable the Judges of the District Court in and for the Northern District of Georgia, Atlanta Division:

The State of Florida, by Fred. H. Davis, its Attorney General, and A. S. Wells, E. S. Mathews, and Mamie C. Eaton, as and constituting Florida Railroad Commission, bring this their bill of complaint against the United States of America and Interstate Commerce Commission, and thereupon respectfully show as follows:

I

That the petitioners, A. S. Wells, E. S. Mathews, and Mamie G. Eaton are the duly elected, qualified and acting Railroad Commissioners of the State of Florida; that as such they are authorized and empowered to investigate and [fol. 3] determine reasonable rates and charges for transportation service performed by railroads as common carriers in the State of Florida and are authorized to bring and maintain suits before any of the Courts of the State of Florida and of the United States for and on behalf of the State of Florida respecting any rates or charges fixed, determined, or authorized by them as well as before the Interstate Commerce Commission or the United States.

That the State of Florida is represented in this proceeding by Fred. H. Davis, who is the duly authorized, qualified and acting Attorney General of the State of Florida and who brings this suit in its behalf and by its authority in his capacity as such Attorney General.

II

The defendant United States of America is made such by virtue of an act of Congress known as the Commerce Court Act, (36 Stat. L., 539) and District Court Jurisdiction Act, (38 Stat. L. 219). The defendant Interstate Commerce Commission is an administrative tribunal created by Act of Congress, February 4, 1887, and whose duties and powers are defined in such act and amendments thereto and supplements thereof.

III

The Georgia Public Service Commission is an administrative tribunal created and existing by authority of law under the constitution and statutes of the State of Georgia, having its official residence in the City of Atlanta, which is in the northern district of Georgia, and so within the jurisdiction of this Court.

IV

The Atlantic Coast Line Railroad Company owns and operates various lines of railway in the States of Georgia [fol. 4] and Florida, including lines from timber areas to the lumber mills located at Eastport, Lacooche, Jacksonville and Palatka, Florida. Over such lines of railway the Atlantic Coast Line transports for shipment wholly within the State of Florida, many carloads of logs. To the lumber mills above referred to the hauls of logs by railroad over the Atlantic Coast Line from these timber areas are all within one hundred and seventy (170) miles.

For the transportation of such logs wholly within the State of Florida as aforesaid, the Atlantic Coast Line Railroad Company voluntarily established and has continued in effect, and now charges and (if lawful so to do) is willing to continue to charge a certain mileage scale of rates known as the "Cummer scale", which, for the varying

distances up to 170 miles, provides varying rates "per car of 50,000 pounds, excess in proportion, to be loaded and unloaded by owner and not to be unloaded on the railroad's right of way."

The Atlantic Coast Line Railroad Company also has published and filed with the Interstate Commerce Commission certain rates which would be applicable to any movement of logs over its line from Florida origins to Georgia destinations which such rates are higher in amount for like distances than the so-called "Cummer scale" applicable for the certain distances and under certain conditions between points in Florida as above described.

V

On or about to-wit, May 3, 1926, said Georgia Public Service Commission, in its own name, filed with the Interstate Commerce Commission a certain complaint against the Atlantic Coast Line Railroad Company. In such complaint it was alleged that the rates of freight on logs published by the Atlantic Coast Line Railroad as applicable to shipments of such commodity from origins on its line in Florida to destinations on its line in Georgia then were and [fol. 5] thereafter would be unjust and unreasonable in violation of the provisions of Section 1 of the Interstate Commerce Act. It was further alleged in such complaint that the contemporaneous publication of such interstate and intrastate rates above described constituted and thereafter would constitute undue prejudice and disadvantage to Georgia Lumber manufacturers and Georgia communities and unjust discrimination against interstate commerce to the undue preference and advantage of shippers of logs between points in Florida in violation of the provisions of Sections 3 and 13 of the interstate commerce act.

VI

Thereupon such complaint was served by the Interstate Commerce Commission upon the Atlantic Coast Line Railroad Company, which, thereafter, and in due course, filed with the Interstate Commerce Commission its answer thereto and in such answer that railroad denied that there was or had been any violation on its part of the interstate commerce act.

Before such complaint and the matters and things therein involved were assigned for public hearing the Commission received and allowed a petition of intervention which was filed by the Elberta Crate Company, of Bainbridge, Georgia, which such intervention appeared to be in support of the complaint.

VII

That the Interstate Commerce Commission in compliance with Section 13 (3) of the Interstate commerce act, notified the State of Florida and the Florida Railroad Commission of the pendency of such proceeding before it, and that said Florida Railroad Commission upon the hearing and argument of the cause before said Interstate Commerce Commission appeared in defense of its jurisdiction of intrastate rates and of its power and authority with respect thereto.

[fol. 6] VIII

That on or about October 20, 1926, the Interstate Commerce Commission without other pleadings or order of investigation, assigned for full public hearing in Valdosta, Georgia, the complaint of the Georgia Public Service Commission aforesaid and the matters and things therein involved, and at that time and place such public hearing was commenced; that at such hearing before the introduction of any evidence by any of the parties thereto, there were filed with the Interstate Commerce Commission a number of petitions of intervention in opposition to so much of the complaint of the said Georgia Public Service Commission as alleged any violation of Sections 3 and 13 of the interstate commerce act by the respondent Atlantic Coast Line Railroad Company, and such interventions were then received and allowed in behalf of the following parties, to-wit: Brooks-Scanlon Corporation, Cummer Lumber Company, Wilson Cypress Company, Cummer Cypress Company, and the Putnam Lumber Company, then of Jacksonville, the Georgia-Florida Sawmill Association, embracing at that time most of the important manufacturers in the State of Georgia, the Southern Line Association and the Southern Cypress Manufacturers Association, embracing within their membership numerous manufacturers of pine and cypress lumber in Florida, Georgia, and elsewhere in southern territory and the Jacksonville Traffic Bureau, a civic organ-

ization in the city of Jacksonville, embracing within its membership numerous industrial, financial, and other commercial interests therein.

There also intervened in such case or proceeding before the Interstate Commerce Commission, the Seaboard Air Line Railway Company, the Central of Georgia Railroad Company, the Southern Railway Company, the Georgia-Southern and Florida Railorad, and the American Short Line Railroad Association. Such parties intervened in behalf of the defendant Atlantic Coast Line Railroad Company on the issue of alleged violations of Section 1 of the [fol. 7] interstate commerce act in respect to the measure of rates on logs published by the Atlantic Coast Line for application to shipments from origins on its line in Florida to destinations on its line in Georgia; but the intervention of such other railroads was in intended and professed support of the complaint of the Georgia Public Service Commission and against the Atlantic Coast Line in so far as said complaint of the Georgia Public Service Commission alleged that the Atalntic Coast Line Railroad was violating the provisions of Sections 3 and 13 of the interstate commerce act by the continued maintenance of the differences between such interstate rates over its line from Florida to Georgia and the lower intrastate rates over its line between points in Florida.

IX

That on the date of filing of the said complaint by the Georgia Public Service Commission with the Interstate Commerce Commission against the Atlantic Coast Line Railroad as aforesaid, there was in force and effect in the State of Florida by authority of the Florida Railroad Commission a certain intrastate rate covering the transportation of logs on the Atlantic Coast Line Railroad Company in said state which rate was commonly known as the "Cummer scale" and hereinbefore described.

X

That on the date of the filing of said complaint by the Georgia Public Service Commission with the said Interstate Commerce Commission against the said Atlantic Coast Line Railroad Company there was situate in proxim-

ity to the railroad line of said Atlantic Coast Line Railroad Company in the State of Florida, and particularly in the counties of Taylor, Madison, Lafayette, Jefferson, Alachua, Baker, Dixie, Levy and Wakulla, many millions of feet of standing pine timber, amounting in the aggregate to more than two billion (2,000,000,000) feet of standing uncut tim-
[fol. 8] ber, the capital value of which aggregates more than Twenty Million Dollars ($20,000,000); that there was engaged in cutting and loggins operations in said timber area more than five thousand (5000) men residents of the State of Florida; that among the more important persons, firms, and corporations engaged in cutting and loggins operations in the State of Florida are the following:

Brooks-Scanlon Corporation, with mills on the St. Johns River in the vicinity of Jacksonville;

Cummer Lumber Company, with mill at Milldale, Florida, in the immediate vicinity of Jacksonville;

Cummer Cypress Company, with a mill at Lacooche, Florida;

Wilson Cypress Company, with a mill at Palatka, Florida;

Wilson Lumber Company, with a mill at Perry, Florida.

The foregoing are all very large mills; there are others of less importance and size.

XI

Thereupon, the Georgia Public Service Commission, the Elberta Crate Company, the Atlantic Coast Line Railroad Company, and the other intervening railroads submitted at such public hearing in Valdosta certain evidence upon conclusion of which petitioners herein, the Putnam Lumber Company and all the other intervening shipper defendants, submitted and filed a motion to dismiss the proceedings in entirety on the ground that there was a total insufficiency of evidence in any way or remotely tending to sustain any allegation in the complaint or sufficient to constitute a cause of action within the power of the Interstate Commerce Commission. Such motion to dismiss was thereupon taken under advisement and the hearing at Valdosta adjourned to a date thereafter to be fixed.

XII

Prior to the further hearing the Georgia Public Service Commission petitioned the Interstate Commerce Commission for leave to reopen the record and to submit further evidence in its behalf, which such petition was granted, and thereupon the case came on for further public hearing in the city of Jacksonville commencing on the eighteenth day of January, 1927. At such time certain additional evidence [fol. 9] was submitted by the Georgia Public Service Commission and the Atlantic Coast Line Railroad Company, upon the conclusion of which the petitioners here, the Putnam Lumber Company and all the other intervening shipper defendants, renewed their previous motion to dismiss the case, which such motion was taken under advisement and the hearing proceeded. Thereupon the petitioners here, the Putnam Lumber Company and all the other intervening shipper defendants referred to, without waiving their motion to dismiss, submitted a subtantial amount of evidence, all of which was received and allowed and made a part of the record in such case.

XIII

Thereafter, on or about to-wit, the fifteenth day of August, 1927, an Examiner of the Interstate Commerce Commission, to whom the case had been assigned for the taking of evidence and submission of proposed report, did file, submit and service upon all interested parties his proposed report in such proceedings. In such proposed report it was found and concluded by the Examiner and recommended by him that the Commission find and conclude that the interstate rates on logs published by the Atlantic Coast — Railroad as if for application from origins on its line in Florida to destinations on its line in Georgia were and thereafter would be unreasonably high in slight amounts. It was, however, found and concluded by the Examiner and recommended by him that the commission conclude that under the evidence of record in the case there did not then exist any interstate commerce in logs over the Atlantic Coast Line Railroad from Florida origins to Georgia destinations on its line, that the differences in prevailing rates applicable to logs moving over the Atlantic Coast Line

whol-y within Florida and those published for application over the Atlantic Coast Line from Florida to Georgia did not and would not cause or constitute undue or unjust prejudice or disadvantage against interstate shippers or communities or undue preference or advantage of Florida intra-
[fol. 10] state shippers or communities, and that the evidence before the Commission did not establish any case of unjust discrimination against interstate commerce as such by reason of the voluntary continuance of the lower Florida intrastate rates on logs by the Atlantic Coast Line Railroad.

XIV

Thereafter the Georgia Public Service Commission and the intervening railroads hereinbefore named filed with the Interstate Commerce Commission exceptions to such proposed report of the Commission Examiner to which exceptions replies were in due course filed by petitioners herein, the Putnam Lumber Company and by the other intervening shipper defendants, including the Southeastern Forest Products Association, which embraced within its membership most of the manufacturers of lumber in Georgia and which by them had succeeded the association formerly known as the Georgia-Florida Sawmill Association, an original intervening shipper defendant as hereinbefore described.

In due course the case of proceeding, including the exceptions to the proposed report of the Commission Examiner and replies thereto, came on to be orally argued in Washington, D. C., before two members of the Interstate Commerce Commission constituting a majority of Division 4 thereof at such time. At such argument there appeared counsel for the Georgia Public Service Commission on the one side, and for the petitioners herein, the Atlantic Coast Line, and the intervening shipper defendants, on the other.

XV

Thereafter on August 2, 1928, such Division 4 of the Interstate Commerce Commission rendered its certain report and order in the proceedings herein referred to, attached hereto, and made a part hereof, being marked Appendix "A."

In such report and order it was found and concluded by such Division 4 of the Commission that the interstate rates on logs published by the Atlantic Coast Line Railroad to Georgia destinations on its line from Florida origins on its [fol. 11] line north of and including Jacksonville, Gainesville, Burnette's Lake and High Springs were, and would be unjust and unreasonable in violation of the provisions of Section 1 of the interstate commerce act in the same amounts previously found and recommended to it by the Examiner.

It was, however, further found by such Division 4 as follows:

"We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce."

"We further find that said undue preference and advantage, undue prejudice, and unjust discrimination can and should be removed by the establishment of rates for intrastate application within Florida which shall correspond with the rates herein found reasonable for interstate application from Florida to Georgia."

"We further find that whether the aforesaid rates pertain to transportation in interstate commerce or to transportation in intrastate commerce the transportation services in each instance are performed by defendant under substantially similar circumstances and conditions."

Accompanying such report was an order requiring the Atlantic Coast Line Railroad to establish on or before October 10, 1928, the interstate rates on logs therein described and (without any date being fixed therefor) requiring the Atlantic Coast Line Railroad to cease and desist from practising the undue preference and advantage, undue prejudice and unjust discrimination found in such report to exist "in the relation of intrastate to interstate rates" and to establish and put in force for the movement of logs between any two stations on its railroad throughout the State of Florida

which should be the same as those prescribed as reasonable for the transportation of logs to Georgia destinations on its line from origins in Florida on its line north of and including Jacksonville, Gainesville, Burnette's Lake and High Springs.

XVI

Thereafter such Division 4 by an order dated the twenty-seventh day of August, 1928, fixed and prescribed November 10, 1928, as the date upon which the Florida intrastate [fol. 12] log rates of the Atlantic Coast Line Railroad should be advanced for the reasons, in the manner and to the extent hereinabove described. Subsequently such effective date of the prescribed increases in Florida rates on logs of the Atlantic Coast Line was extended to December 10, 1928.

XVII

On or about, to-wit, October 1, 1928, petitioners herein, the Putnam Lumber Company, and the other intervening shipper defendants before the Commission filed with it their petitions for reargument and reconsideration of that part and portion of the report and order of Division 4 as had found the Florida intrastate log rates of the Atlantic Coast Line Railroad violative of Sections 3 and 13 of the interstate commerce act. On the first day of November, 1928, a majority of the full membership of the Interstate Commerce Commission denied such petitions of reargument and reconsideration.

XVII-

Wherefore, having exhausted their administrative remedies, your petitioners herein respectfully institute this proceeding for the purpose of annulling, vacating, and setting aside such report and order of the Interstate Commerce Commission, enjoin the enforcement thereof insofar as such report and order has required or requires the defendant in said proceeding, the Atlantic Coast Line Railroad Company, to establish, put in force, and maintain rates for the transportation of logs, (except walnut, cherry and cedar) in carloads, minimum weight 40,000 pounds, on in-

trastate commerce within the State of Florida which shall be the same as those prescribed by the said Interstate Commerce Commission as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia.

And as grounds therefor petitioners respectfully show unto the Court that said report and order in respect to such Florida intrastate rates of the Atlantic Coast Line Railroad Company on logs are arbitrary and unreasonable beyond the power of the Interstate Commerce Commission and wholly invalid and unlawful in the following respects, and for the following reasons, among others:

[fol. 13] (A). Such report and order are unlawful because under the facts of record in such proceedings before the Interstate Commerce Commission there was no constitutional right or warrant for the exercise or attempt to exercise any federal power in derogation of or superior to the power and authority of the State of Florida in respect to the regulation of intrastate commerce sought to be affected by such order.

(B). Such report and order are unlawful because there was no substantial evidence before the Interstate Commerce Commission, nor did that tribunal find that there was any substantial evidence before it showing or tending to show that there was or could be any undue or unjust preference or advantage of Florida shippers or communities, or any undue or unjust prejudice or disadvantage of Georgia Shippers in violation of Sections 3 and 13 of the interstate commerce act.

(C). Such report and order are unlawful because the Interstate Commerce Commission has thereby sought to regulate internal concerns of the State of Florida as if unjust discrimination against interstate commerce in violation of Section 13 existed when there was not submitted to the Interstate Commerce Commission by any party to the proceedings before it any case or controversy of such character, and there was no other pending proceeding or order of investigation of such Commission involving any such subject matter.

(D). Such report and order are unlawful because there were no facts of record in such proceeding before the Interstate Commerce Commission showing, or tending to show, nor did the Interstate Commerce Commission find any facts sufficient to constitute unjust discrimination against interstate commerce in violation of the provisions of Section 13 of the interstate commerce act.

[fol. 14] (E). Such report and order are unlawful because thereby the Interstate Commerce Commission has sought to embrace with- the scope thereof all rates of the Atlantic Coast Line Railroad Company on logs between any stations on its line wholly within the State of Florida for any length of haul, and in any portions of such State, although there was no cause or controversy submitted to that tribunal or pending before it involving in any way freight rates of the Atlantic Coast Line Railroad on logs within Florida except for hauls of 170 miles and less over such railroad and except for hauls of such length over such railroad wholly within the so-called northern portion of the State. Furthermore, there was no substantial evidence in such proceedings before the Interstate Commerce Commission showing or tending to show that all freight rates of the Atlantic Coast Line Railroad Company on logs over any portion of its line, wholly within the State of Florida, violated or would violate either Section 3 or Section 13 of the Interstate Commerce Act. Therefore, such order unlawfully embraces within its territorial scope freight rates on logs between points within the State of Florida, as to which no case or controversy was submitted to the Interstate Commerce Commission and as to which no substantial evidence was directed.

XIX

The said action of said Interstate Commerce Commission constitutes an unlawful invasion of the sovereign rights of the State of Florida reserved to it by the Constitution of the United States and of the citizens of the said State of Florida, and is without any warrant or authority of or under the Constitution of the United States; and further, that the same Commission was and is without jurisdiction to enter its said order.

XX

The said action of said Interstate Commerce Commission constitutes an unlawful exercise of power by the said Interstate Commerce Commission and is without warrant or authority of or under the Constitution of the United States.

[fol. 15]

XXI

Petitioners respectfully show unto the Court that the operation and effect of such order of the Interstate Commerce Commission, requiring the Atlantic Coast Line Railroad Company to establish, put in force, maintain rates for the transportation of logs (except walnut, cherry and cedar) in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which shall be the same as those prescribed by the Interstate Commerce Commission as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia, will be to cause irreparable damage and injury in this, to-wit:

Such order would require the Atlantic Coast Line Railroad Company to very considerably increase the intrastate transportation charges now being paid for the transportation of logs from shipping points in the State of Florida to lumber mills in the State of Florida, which increase in transportation costs would immediately render it highly unprofitable to said shippers of logs to attempt to continue using the transportation facilities of said Atlantic Coast Line Railroad Company to transport said logs to existing lumber mills which are located on said line and substantiall distances away from the source of timber supply of sawmills which utilize the same. That the operators of said mills would immediately be obliged to discontinue and abandon their existing sawmill operations, thereby throwing out of employment a large number of citizens of the State of Florida and destroying existing industries located in the State of Florida and forming a substantial part of the taxable values thereof; that in addition thereto, the order of the Interstate Commerce Commission will destroy the great volume of existing intrastate commerce in logs in the State of Florida on said Atlantic Coast Line Rail-

road without bringing into existence, aiding, or promoting, or removing any obstacle to interstate commerce in logs on said Atlantic Coast Line Railroad from points in the State of Florida to points in the State of Georgia; that on account [fol. 16] of said order operators of existing mills which are dependent upon receiving their supply of logs by means of shipments of same made in intrastate commerce over the Atlantic Coast Line Railroad Company will be immediately required to discontinue and abandon their existing mill operations and undertake to reconstruct new mills located in the timber areas at the source of supply of logs, so as to completely avoid common carrier railroad transportation of logs as a means of supplying said mills with raw material to be cut into lumber; all of which will not only involve expenditures of several millions of dollars by said operators of said mills, because such relocation will cost less than the payment of the increased transportation charges on the remaining uncut timber, which would require transportation under the transportation rates sought to be put in force by said order of the Interstate Commerce Commission; that pending the relocation of said mills by the operators thereof, which would be occasioned by the enforcement of the said order of the Interstate Commerce Commission, thousands of persons now employed by the lumber mills located in the State of Florida and affected thereby, would be thrown out of employment by the immediate shut-down and closing of such mills, all of which would cause great distress to them and their families, to the communities in which they reside, and to the merchants, banks and other commercial enterprises dependent upon the continued operation of said lumber mills at their present locations; that such damage to property and persons in the State of Florida cannot be compensated for nor adequately redressed by any suit or suits at law, and petitioners herein have no plain, complete and adequate remedy at law available to them in the premises.

XXII

That already, since the commencement of the proceedings before the Interstate Commerce Commission and by reason thereof, the Putnam Lumber Company and Cummer Lumber Company, which were intervening shipper defendants [fol. 17] involved in said proceeding, have discontinued

transportation of logs over the Atlantic Coast Line Railroad between points in Florida; and said Putnam Lumber Company has constructed a new lumber mill in the vicinity of the timber owned by such company, in order to avoid the necessity of logs from the timber areas to mills located at some distance from timber supply and requiring timber supply to be transported from the timber areas to the mill by use of common carrier transportation facilities and by reason thereof said Putnam Lumber Company, which was an intervening party to said proceeding before the Interstate Commerce Commission, and the Cummer Lumber Company, now have no further interest in the matters and things involved in such proceeding before said Commission, nor in the subject matter of this suit.

Wherefore it is respectfully prayed for by the petitioners herein as follows:

I. That process may issue against the defendants, United States of America, and Interstate Commerce Commission, an administrative tribunal of the United States, with service thereof and of this Bill of Complaint, in the manner prescribed by statute in such cases made and provided.

II. That this Honorbale Court will grant to petitioners herein an interlocutory order, setting aside and enjoying enforcement of such part or parts of the order of the Interstate Commerce Commission as require the Atlantic Coast Line Railroad, a common carrier subject to the jurisdiction of the administrative regulatory Commission of the State of Florida, to establish, put in force and maintain rates for the transportation of logs (except walnut, cherry and cedar) in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which will be the same as those prescribed by the Interstate Commerce Commission as reasonable for transportation in interstate [fol. 18] commerce from points in the State of Florida to destinations in the State of Georgia, without first seeking the authority of the State of Florida so to do and that such interlocutory order continue in force until further order of this Honorable Court.

III. That upon final hearing there will be made and entered a decree and order of this Honorable Court annulling,

setting aside, and enjoining that portion of the order of the Interstate Commerce Commission entered by it on the second day of August, A. D. 1928, in Docket No. 18364, entitled Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, 146 I. C. C. 717, by which said Interstate Commerce Commission modified and required the defendant Atlantic Coast Line Railroad Company to establish, put in force and maintain rates for the transportation of logs (except walnut, cherry, and cedar) in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida, which shall be the same as those prescribed in the same order of the Interstate Commerce Commission in a preceding paragraph thereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia; and that petitions have such other and further relief in the premises as to the Court shall seem meet and just and as equity may require.

For all of which petitioners forever pray.

The State of Florida, by John W. Martin, Governor. A. S. Wells, Mamie G. Eaton, E. S. Matthews, as and Constituting the Railroad Commission of the State of Florida. For the State of Florida: Fred H. Davis, Attorney General, State of Florida. T. T. Turnbull, Special Counsel for Florida Railroad Commission, Solicitor for Petitioners.

[fol. 19] EXHIBIT "A" TO BILL OF COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION v. ATLANTIC COAST LINE RAILROAD COMPANY

Submitted December 16, 1927. Decided August 2, 1928

1. Interstate rates on logs, except walnut, cherry, and cedar, in carloads, from Florida points north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, Fla., to destinations in Georgia found unreasonable. Reasonable rates prescribed.

2. Florida intrastate rates on logs, except cedar, in carloads, found to be unduly preferential of shippers in intrastate commerce, unduly prejudicial to shippers in interstate commerce, and unjustly discriminatory against interstate commerce. Rates prescribed which will remove such preference, prejudice, and discrimination.

James A. Perry, W. R. McDonald, O. R. Bennett, Albert J. Woodruff, and E. M. Price for complainant.

J. M. Simmons for Elberta Crate Company, intervener, and Champion Box Company; J. C. Jackson and H. A. Jackson for Jackson Brothers Lumber Company; J. E. Davis for himself; and C. C. Giddens for J. N. Bray & Company.

Carl H. Davis, Robert C. Alston, and W. E. Kay for defendant.

Frank G. Whathmey and Henry Thurtell for Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company, and Georgia Southern & Florida Railway Company; and J. A. Streyer for American Short Line Railroad Association, interveners.

A. S. Wells, E. S. Matthews, Mamie G. Eaton, R. Hudson Burr, Fred H. Davis, J. H. Tench, and Fred Pettijohn for Florida Railroad Commission.

T. J. McGinn for Board of Trade and city of Savannah.

Charles E. Cotterill for Cummer Cypress Company, Wilson Cypress Company, and Putnam Lumber Company; Edward P. Sanborn and George L. Rutherford for Brooks-Scanlon Corporation; H. P. Adair for Putnam Lumber Company, H. P. Osborne for Wilson Cypress Company; E. W. Mitchell for Cummer Cypress Company; J. S. Farish for Southeastern Forest Products Association; J. O. Cassidy and E. C. Green for Jacksonville Traffic Bureau; R. E. Mich for Southern Cypress Manufacturers' Association; and A. G. T. Moore for Southern Pine Association, interveners.

[fol. 20] By the Commission

Division 4, Commissioners Meyer, Eastman, and Woodlock

By Division 4:

Exceptions were filed by complainant and by interveners Seaboard Air Line, Central of Georgia, Southern, and

Georgia Southern & Florida to the report proposed by the examiner, to which the Florida Railroad Commission and interveners Jacksonville Traffic Bureau, Southeastern Forest Products Association, Brooks-Scanlon Corporation, Putnam Lumber Company, Wilson Cypress Company, and Cummer Cypress Company replied. The case has been orally argued. Our conclusions differ from those recommended by the examiner.

By complaint filed May 3, 1926, complainant alleges on behalf of Georgia log shippers that the rates on logs in car loads from points in Florida on defendant's lines to destinations in Georgia on defendant's lines are unjust and unreasonable and, as compared with the rates applicable intrastate within Florida, unjustly discriminatory and unduly prejudicial, and that defendant's Florida intrastate rates are unduly preferential of intrastate shippers in Florida, unduly prejudicial to interstate shippers from Florida to Georgia, and unjustly discriminatory against interstate commerce. Reasonable, nonprejudicial, and nondiscriminatory rates for the future are sought.

The Florida Railroad Commission filed no formal petition of intervention but appeared in defense of the Florida intrastate rates. The Elberta Crate Company of Bainbridge, Ga., intervened in support of the complaint. The Seaboard Air Line, Central of Georgia, Southern, Georgia Southern & Florida, and the American Short Line Railroad Association intervened in opposition to the continuance of the present Florida intrastate rates and to the extension of such rates interstate to Georgia. The Jacksonville Traf-
[fol. 21] fic Bureau, Brooks-Scanlon Corporation, Putnam Lumber Company, Wilson Cypress Company, and Cummer Cypress Company, hereinafter referred to as the Florida interveners, intervened in support of the Florida rates. The Georgia-Florida Sawmill Association, now the Southeastern Forest Products Association, the Southern Pine Association, and the Southern Cypress Manufacturers' Association also intervened in opposition to the complaint.

At the hearing the Florida Railroad Commission and the Florida interveners moved that the complaint be dismissed on the grounds that evidence sufficient to constitute a cause of action within the power of this commission to remedy had not been submitted and that the allegations of the com-

plaint had not been sustained. The evidence justifies consideration of the case on its merits and the motion is denied.

While complainant assails the rates from all points on defendant's lines in Florida to all points on its lines in Georgia, the record shows that in so far as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry, and cedar, from that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, hereinafter referred to as north Florida, to destinations in Georgia for distances not exceeding 170 miles.

The interstate rates from north Florida to Georgia are published in cents per 100 pounds, minimum 40,000 pounds, and apply between north Florida and points south of Charleston, S. C. They became effective August 15, 1925, as a part of a general revision of defendant's log rates. From points south of Jacksonville, Gainesville, Burnett's Lake, and High Springs higher interstate rates apply. The Florida intrastate rates assailed are published in amounts per car, minimum 50,000 pounds, excess in proportion, and apply on logs, except cedar, for 170 miles and under. There follows a brief history of the latter rates.

[fol. 22] On June 29, 1903, a contract was entered into between the Jacksonville & Southwestern Railroad and the Cummer Lumber Company, controlled by the same interests, under which the former agreed to transport logs for the latter at certain specified rates for a period of 15 years. The Jacksonville & Southwestern extended from Jacksonville southwesterly to Newberry, Fla., approximately 85 miles. The mills of the Cummer Lumber Company were at Mildale, near Jacksonville. Under this contract the rates per car of 50,000 pounds were $4 for distances under 40 miles, $7 for distances from 40 to 60 miles, and $8 for distances from 60 to 90 miles, with $1 per car additional for each 10 miles over 90, the rate from the Suwannee River not to exceed $10 per car. These rates are generally referred to as the Cummer scale. Defendant acquired the properties of the Jacksonville & Southwestern in 1904 and had to assume the obligations of that company under the contract referred to. Upon its expiration in 1918 the contract was not renewed. In the meantime, on January 26, 1914, defendant entered into a similar contract with the

Carpenter-O'Brien Company, the predecessor of intervener Brooks-Scanlon Corporation, which was to continue in effect until such time as the timber in Lafayette and Perry Counties, Fla., then owned by the Carpenter-O'Brien Company, consisting of approximately, 1,000,000,000 feet of pine, largely tributary to defendant's line extending from Newberry to Perry, Fl-., had been transported. The contract provided for movement from points between Clara, and Perry, inclusive, to the plant of the lumber company at Eastport near Jacksonville, 142 to 166 miles, in trainloads of not less than 30 cars per day, or 60 cars every other day, [fol. 23] Sundays and legal holidays excepted, at a rate of $12 per car, minimum 50,000 pounds, excess in proportion. It was stipulated that the contract should be subject to Federal and Florida laws and to the order of any court or commission of competent jurisdiction. Pursuant to this contract defendant filed schedules with the Florida commission extending the Cummer scale to $11 per car for distances from 110 to 130 miles, and $12 per car for distances from 130 to 150 miles. That commission refused to permit the proposed rates to become effective because they were published to apply only on train loads and were not available to all shippers. It further advised defendant that the rates themselves were too low and such as might be deemed confiscatory. The rates were republished to apply on carloads over all of defendant's Florida lines and became effective October 30, 1914. On July 5, 1916, the scale was extended so as to apply the $12 rate for distances to 160 miles. On April 30, 1919, the scale was further extended by establishing a rate of $16.50 for distances to 170 miles, the latter rate including the 25 per cent general increase of June 25, 1918. These rates were established and, as modified by the subsequent general increases and reduction, have been continued by defendant for the purpose of complying with its contractual obligations and not because it considers the scale proper for general application on intrastate traffic within Florida. The record shows 128,163 carloads containing approximately 700,000,000 feet of timber transported under the Carpenter-O'Brien contract from 1915 to 1926, both inclusive, and on argument defendant estimated that at the rate of movement at that time the contract would have from two to three years more to run. The

record also shows that intervener Brooks-Scanlon Corporation on August 31, 1926, owned timber in Wakulla, Jefferson, Madison, Taylor, Lafayette, and Dixie Counties, Fla., estimated to contain 1,207,432,000 feet.

The Florida commission and the Florida interveners contend that the Florida intrastate rates are remunerative to defendant and should not be changed. They neither advocate nor oppose the extension of such rates interstate to Georgia. The intervening carriers contend that defend- [fol. 24] ant's Florida intrastate rates are unreasonably low and are opposed to their continuance and to any reduction in defendant's interstate rates, contending that if the latter are reduced competition will necessitate corresponding reductions in their rates. Defendant does not consider the intrastate rates reasonably compensatory for general application throughout Florida but proposes to continue them, if permitted to do so, until the logs referred to in the Carpenter-O'Brien contract have been transported. It strongly opposes the use of such rates as a measure of reasonable interstate rates from Florida to Georgia. While not admitting that the interstate rates are unreasonable, defendant submitted a proposal to revise such rates down to the level of the Alabama intrastate log rates which became effective June 1, 1925, pursuant to an order of the Alabama Public Service Commission. The scale proposed covers distances up to 450 miles and would apply on logs, except walnut, cherry, and cedar, in carloads, minimum 40,000 pounds. The proposed rates are on substantially the same basis as the present rates under the scales prescribed in Pierpont Mfg. Co. v. S. Ry. Co., 50 I. C. C. 81 from points in South Carolina south of Columbia to Savannah, Ga., and in Southern Veneer Asso. v. A. C. L. R. R. Co., 62 I. C. C. 669, on popular and gum logs from points in South Carolina to destinations in Mort- Carolina. They are on the same basis as those prescribed in Southern Cotton Oil Co. v. A. C. L. R. R. Co., 120 I. C. C. 190 on logs, except walnut, cherry, and cedar, from points on defendant's line south of Charleston to Savannah. Defendant expresses a willingness to establish these rates for interstate application over its entire system except south Florida, and would apply them intrastate in North Carolina, South Carolina, and Georgia if permitted by State authorities. From south

Florida defendant would establish rates approximately 15 per cent higher than from north Florida.

[fol. 25] The present interstate and intrastate rates and the proposed interstate rates from north Florida in cents per 100 pounds, and the earnings thereunder per car of 50,000 pounds for distances to 170 miles, follows:

Distance	Florida-Georgia interstate		Florida intrastate		Proposed interstate	
	Rate	Earnings	Rate	Earnings	Rate	Earnings
	Cents		Cents		Cents	
5 miles	2.5	$12.50	1.71	$8.55	2.5	$12.50
10 miles	3	15.00	1.71	8.55	2.5	12.50
15 miles	3.5	17.50	1.71	8.55	3	15.00
20 miles	3.5	17.50	1.71	8.55	3	15.00
25 miles	4	20.00	1.71	8.55	3.5	17.50
30 miles	4	20.00	1.71	8.55	3.5	17.50
35 miles	4.5	22.50	1.71	8.55	4	20.00
40 miles	4.5	22.50	1.71	8.55	4	20.00
45 miles	5	25.00	2.10	10.50	4.5	22.50
50 miles	5	25.00	2.10	10.50	4.5	22.50
55 miles	5.5	27.50	2.10	10.50	4.5	22.50
60 miles	5.5	27.50	2.10	10.50	4.5	25.00
65 miles	6	30.00	2.30	11.50	5	25.00
70 miles	6	30.00	2.30	11.50	5	25.00
75 miles	6.5	32.50	2.30	11.50	5.5	27.50
80 miles	6.5	32.50	2.30	11.50	5.5	27.50
85 miles	7	35.00	2.30	11.50	5.5	27.50
90 miles	7	35.00	2.30	11.50	6	30.00
95 miles	7	35.00	2.60	13.00	6	30.00
100 miles	7	35.00	2.60	13.00	6	30.00
110 miles	7.5	37.50	2.80	14.00	6.5	32.50
120 miles	8	40.00	3.20	16.00	6.5	32.50
130 miles	8.5	42.50	3.20	16.00	7	35.00
140 miles	8.5	42.50	3.40	17.00	7	35.00
150 miles	9	45.00	3.40	17.00	7.5	37.50
160 miles	9	45.00	3.40	17.00	7.5	37.50
170 miles	9.5	47.50	3.70	18.50	8	40.00

Complainant introduced exhibits showing that defendant's proposed interstate rates are higher than its intrastate log rates in various of the southeastern States, than the average of such intrastate rates, and that the combined average of its intrastate and interstate rates. Rates substantially the same as those proposed by defendant were, however, prescribed by complainant in 1925 for application within Georgia, and while complainant's order was later rescinded, its rate expert testified that the rates then prescribed were in his opinion on a reasonably low basis.

[fol. 26] Complainant also submitted numerous comparisons between the Florida intrastate rates and the interstate

rates to show undue prejudcie to interstate shippers to Bainbridge, Albany, Thomasville, Quitman, Valdosta, and Waycross, Ga., and undue preference of intrastate shippers to Florida points. No movement from Florida to Georgia is shown and complainant states that there can be none because of the substantially higher level of the rates interstate than intrastate. There are 64 sawmills along defendant's line in Georgia within 170 miles of Florida, and representatives of some of them testified that there is available timber in Florida which could be economically purchased and transported over defendant's line to Georgia mills if the rates were reasonable. The following will illustrate the comparisons referred to. The charges per car of 50,000 pounds from Live Oak, Fla., to Jacksonville, 128 miles, are $16, while from Live Oak to Waycross, 83 miles, the charges are $35.

Defendant submitted evidence purporting to show the estimated cost of transporting logs of the Brooks-Scanlon Corporation during September, 1926, from Perry and Carbur to Eastport, 166 and 144 miles, respectively; 1,371 loaded cars were transported in trainloads of from 39 to 50 cars, and the estimated cost per loaded car was $19.13. This cost does not include interest on investment except on equipment used. Based on a lading of 60,200 pounds, the average of 983 carloads transported for this shipper and intervener Putnam Lumber Company, the rate for the average distance would yield revenue of $20.47 per car, but $1.34 over the estimated cost of service for trainload movements. The Florida commission also introduced a cost study to show that the intrastate rates are remunerative to defendant. Its estimate was that $14.62 represents the approximate cost per car of transporting logs in trainloads between the above points, which, deducted from the average revenue per car of $20.47, leaves a net revenue of $5.85 per [fol. 27] car. Both cost studies are based on certain arbitrary assumptions and both are based on movements in trainloads from two points of origin to one destination. Neither can be accepted to show the approximate actual cost of transporting logs in single carloads intrastate throughout Florida. The record shows that while most of the Florida intrastate log traffic is in trainloads, there is a substantial movement over defendant's line in less than trainloads.

Defendant also shows that the earnings under the Florida intrastate rates are materially lower than the earnings under the interstate rates from Florida to Georgia on brick, sand, lime, and cement. For example, it shows that the interstate rate on sand and gravel for 160 miles, equivalent to 6.75 cents per 100 pounds, yields revenue of $62.46 per car based on a lading of 92,540 pounds, as contrasted with $18.70 on logs, based on a lading of 55,000 pounds. The weights used were the actual average weights on defendant's lines for 1925. It is also shown that these Florida intrastate rates are considerably lower than any other rates, intrastate or interstate, referred to of record.

Witnesses for the Florida interveners testified that any material increase in the Florida intrastate rates would either cause them to move their plants to the timber or abandon operations, in either of which events defendant would lose considerable traffic; that these interveners have expended millions in the development of their properties, communities have grown up in the vicinity of their mills, and abandonment of the present mill sites would result in heavy losses to them and to their employees; that it would cost intervener Brooks-Scanlon Corporation between three and four million dollars to move its plant from Eastport, which would probably lose most of its 5,000 inhabitants, as practically every family is dependent upon the operation of the plant; and that other Florida lumber companies and [fol. 28] communities would be similarly affected. They also testified that there exists no Florida timber in commercial volume within 170 miles of Georgia which could be acquired by Georgia log shippers, as all of such timber is owned by Florida mills; and that while there are a few scattered areas of timber in north Florida held largely by farmers for their personal requirements, successful exploitation of these tracts, because of their limited extent, could only be accomplished by the use of portable mills operating in close proximity to the standing timber.

The interstate rates which defendant proposes from north Florida are in our opinion reasonable. They are, as heretofore stated, the same as those prescribed by the Alabama commission for intrastate application within that State, and by us for interstate application in other sections of the Southeast. All of the Florida points from which they will apply appear to be located south of the line of the

Seaboard Air Line extending from Jacksonville to River Junction, from and to which we invariably prescribe maximum reasonable rates that are higher than from and to other points in southern territory.

It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory. The rate for 160 miles yields but 4.25 mills a ton-mile, and, based on a lading of 60,200 pounds, 12.8 cents a car-mile. They are approximately one-half of the rates prescribed in Rates on Chert, Clay, Sand, and Gravel, 122 I. C. C. 133, on sand and gravel in the Southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140, I. C. C. 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line. As stated in the original report in that case, sand and gravel are of unusual low value, it being doubtful whether any traffic moves which is worth less at point of production, load very heavily, and normally move in considerable volume without unusual switching operations at either end and without anything in the nature of special services. The evidence is not convincing that logs could not or would not move from Florida to Georgia if the interstate rates and the Florida intrastate rates were on [fol. 29] the same level.

We find that the interstate rates on logs, except walnut, cherry, and cedar, in carloads, from points on defendant's lines in Florida north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, to destinations on its lines in Georgia for distances not exceeding 170 miles are, and for the future will be, unreasonable to the extent that they exceed, or may exceed, the following distance scale of rates in centers per 100 pounds, minimum weight 40,000 pounds, which rates we find are and will be reasonable:

Distance	Rate, cents
10 miles and less	2.5
20 miles and over 10	3
30 miles and over 20	3.5
40 miles and over 30	4
55 miles and over 40	4.5
70 miles and over 55	5

85 miles and over 70	5.5
100 miles and over 85	6
120 miles and over 100	6.5
140 miles and over 120	7
160 miles and over 140	7.5
170 miles and over 160	8

We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce.

We further find that said undue preference and advantage, undue prejudice, and unjust discrimination can and should be removed by the establishment of rates for intrastate application within Florida which shall correspond with the rates herein found reasonable for interstate application from Florida to Georgia.

We further find that whether the aforesaid rates pertain to transportation in interstate commerce or to transportation in intrastate commerce the transportation services in each instance are performed by defendant under substantially similar circumstances and conditions.

An appropriate order will be entered.

[fol. 30] At a session of the Interstate Commerce Commission, Division 4, held at its office, in Washington, D. C., on the 2nd day of August, A. D. 1928.

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Order

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things in-

volved having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above named defendant be, and it is hereby, notified and required to cease and desist, on or before October 10, 1928, and thereafter to abstain, from publishing, demanding, or collecting its present rates for the transportation of logs, except walnut, cherry, and cedar, in carloads, from and to the points designated in the next succeeding paragraph hereof.

It is further ordered, That said defendant be, and it is hereby, notified and required to establish, on or before October 10, 1928, upon notice to this commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of logs, except walnut, cherry, and cedar, in carloads, from points on its lines in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, to destinations on its lines in the State of Georgia, the following rates in cents per 100 pounds, subject to a minimum weight of 40,000 pounds:

[fol. 31]

Distance	Rate, cents
10 miles and less	2.5
20 miles and over 10	3
30 miles and over 20	3.5
40 miles and over 30	4
55 miles and over 40	4.5
70 miles and over 55	5
85 miles and over 70	5.5
100 miles and over 85	6
120 miles and over 100	6.5
140 miles and over 120	7
160 miles and over 140	7.5
170 miles and over 160	8

It is further ordered, That said defendant be, and it is hereby notified and required to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to

exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain rates for the transportation of logs, except walnut, cherry, and cedar, in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which shall be the same as those prescribed in the next preceding paragraph hereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the commission, division 4.

George B. McGinty, Secretary. (Seal.)

A true copy. George B. McGinty, Secretary.

[fol. 32] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPLICATION FOR INJUNCTION—Filed Jan. 3, 1929

To the Attorney General of the United States; the Interstate Commerce Commission:

You will hereby take notice that the petitioners herein will present to the District Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division, at Atlanta, Georgia an application for a temporary or interlocutory injunction or a temporary stay or suspension, restraining the United States of America and the Interstate Commerce Commission from enforcing a certain order entered by the Interstate Commerce Commission on the second day of August, 1928, as specifically set forth in the Bill of Complaint herein, copy of which Bill is attached hereto, and that said application will be for hearing at Atlanta, Georgia, at 10 o'clock a. m., on the third day of December, 1928, or as soon thereafter as the Court may hear the same.

Dated this twenty-eighth day of November, 1928.

Fred H. Davis, Attorney General, State of Florida.

Service by copy of the within application and notice is hereby acknowledged this twenty-eighth day of November, 1928.

William J. Donovan, the Assistant to the Attorney General, for Attorney General of the United States.
Daniel W. Knowlton, for Interstate Commerce Commission.

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES—Filed Dec. 24, 1928

United States, for answer to the bill of complaint filed herein against it, says:

I

United States admits the allegations and conclusions of paragraphs I to X, inclusive, with this exception: that with respect to said paragraph X it has not sufficient knowledge or information to form a belief concerning (1) the capital value of the standing uncut timber in that paragraph alleged; or (2) the location of the several sawmills and the operators thereof as alleged in that paragraph.

II

United States admits the allegations and conclusions alleged in paragraphs XI to XVII, inclusive, of the bill of complaint but with respect to the allegation contained in said paragraph XIII it alleges that the matters and things therein set forth and alleged are immaterial to any issue raised by or involved in this proceeding and are, therefore, mere surplusage, inasmuch as the proposed report of the Examiner is not the report or order of the Interstate Commerce Commission and is not and could not be attacked in this proceeding.

III

United States denies the allegations and conclusions made and contained in paragraphs XVIII to XXI, inclusive, of the bill of complaint and specifically denies the allegation

in said paragraph XXI that the operation and effect of said order of the Interstate Commerce Commission of August 2, 1928, will cause irreparable damage and injury.

[fol. 34] IV

For answer to paragraph XXII of the bill of complaint United States says that it has not sufficient knowledge or information upon which to form a belief concerning the matters and things in that paragraph alleged and, therefore, as to them neither admits nor denies.

V

Except as herein expressly admitted United States denies the truth of each and every allegation made and contained in the bill of complaint in so far as they conflict either with the allegations herein or with the statements or conclusions of fact included in said report and order of August 2, 1928.

Wherefore, having fully answered, defendant prays that the bill of complaint be dismissed at the cost of the petitioners and for such other and further order as may be appropriate.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

Duly sworn to by Elmer B. Collins. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 35] In United States District Court

[Title omitted]

Petition for Intervention as Defendants by Georgia Public Service Commission—Filed Dec. 29, 1928

Now comes Georgia Public Service Commission and respectfully represents that it was the complainant before the Interstate Commerce Commission in the proceeding which

resulted in the report and order which is the subject matter of the litigation in this cause.

Your petitioner desires to appear and be made a party defendant in the said cause and to be represented before this Court in the disposition thereof.

This petition is made in accordance with Section 213 of the Federal Judicial Code.

Respectfully submitted.

Georgia Public Service Commission, by Jas. A. Perry, Chairman. Jas. A. Perry, Atty. for Georgia Public Service Commission.

The foregoing petition of Georgia Public Service Commission is granted.

This 29th day of Dec., 1928.

Sam'l H. Sibley, Judge United States District Court, Northern District of Georgia.

[File endorsement omitted.]

[fol. 36] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF GEORGIA PUBLIC SERVICE COMMISSION—Filed Dec. 29, 1928

Georgia Public Service Commission, intervening defendant in the above entitled suit, now and at all times hereafter saving and reserving to itself all manner of benefit and advantage of exceptions to the many errors and insufficiencies in the complainants' bill of complaint contained, for answer thereunto and to so much or such part thereof as it is advised that it is material for it to answer, says:

1

This intervener admits the allegations of paragraph 1 of the bill.

2

Intervener admits the allegations of paragraph 2 of the bill.

3

The allegations of paragraph 3 are admitted.

4

This intervener admits that the Atlantic Coast Line Railroad Company owns and operates the lines of railroad referred to in this paragraph. This intervener is advised as to the establishment of the rates on lumber known as the [fol. 37] "Cummer scale" for distances up to one hundred and seventy (170) miles, providing varying rates "per car of 50,000 pounds excess in proportion, to be loaded and unloaded by owner and not to be unloaded on the railroad's right-of-way" by the record which was made in the cause before the Interstate Commerce Commission in the case in which the order complained of was issued. That record will be laid before this Court. This intervener avers that the rates prescribed under the Cummer scale are unjust, are unreasonable and unlawful; that they are unduly and unjustly discriminative against interstate commerce and against shippers in interstate commerce; that those rates have been condemned by the order of the Interstate Commerce Commission in the report and order attached as Exhibit A to this bill, a part of which said report is as follows:

"Florida intrastate rates on logs except cedar in car loads, found to be unduly preferential of shippers in intrastate commerce, unduly prejudicial to shippers in interstate commerce and unduly discriminatory against interstate Commerce."

Those rates were also condemned by the Florida Railroad Commission in the manner set out in the Interstate Commerce Commission's report in this case.

5

The allegations of paragraph 5 are admitted.

6

It is admitted that the Atlantic Coast Line Railroad Company answered the complaint. Its answer is a part of the record before the Commission and is referred to. It is

admitted that the Elberta Crate Company of Bainbridge, Georgia, intervened in said proceeding.

[fol. 38] 7

It is admitted that the Florida Railroad Commission and the State of Florida were notified of the said proceedings in the manner required by law, and that the Florida Railroad Commission appeared and took part in the Interstate Commerce Commission proceeding.

8

It is admitted that the Interstate Commerce Commission set the cause for hearing on October 20, 1926 at Valdosta, and that a number of petitions of intervention were filed.

9

The allegations of paragraph 9 are admitted.

10

This intervener is unable to admit or deny the allegations of paragraph 10 but it admits that there are very large timber holdings in Florida and in the counties mentioned on or near the lines of the Atlantic Coast Line Railroad Company and that the corporations mentioned in this paragraph own a large part of said timber.

11

Intervener admits that there was a public hearing at Valdosta; that a large amount of testimony was taken; that a motion to dismiss these proceedings was filed by certain of the interveners, and said motion was not granted, but was denied.

12

Defendant admits that there were further hearings at Jacksonville, Florida, beginning on the 18th day of January, 1927, in said matter before the Commission; that there was a large amount of evidence received.

[fol. 39] 13

Intervener admits that the examiner taking the evidence filed a proposed report in this proceeding. Said proposed report was filed in accordance with the practice in such matters appertaining before the Commission. Said proposed report is refered to and must speak for itself.

14

Intervener admits that it and other parties at interest in the said hearing who had intervened therein, filed exceptions to all or parts of the above mentioned proposed report; that those exceptions came on to be argued orally and in Washington; that the same was argued; said argument was had before Division 4 of the Commission on the 16th day of December, 1927. The complainants in said cause were heard orally by counsel and filed briefs in said cause.

15

Intervener admits that Division 4 of the Interstate Commerce Commission rendered a report and order which is attached as Exhibit A to the bill. The report and order are referred to for their contents. In said report, the Interstate Commerce Commission found in part as follows:

"Florida intrastate rates on logs except cedar in car loads, found to be unduly preferential of shippers in intrastate commerce, unduly prejudicial to shippers in interstate commerce and unduly discriminatory against interstate commerce."

The Commission prescribed rates which would remove the said discrimination.

16

It is admitted that Division 4 of the Commission extended the effective date of its aforementioned order to November 10, 1928, and again to December 10, 1928.

17

It is admitted that the complainants and certain others filed with the Commission a petition for reargument and

reconsideration of so much of the Commission's order as found the Florida intrastate log rates of the Atlantic Coast Line Railroad Company violative of Sections 3 and 13 of the Interstate Commerce Act, and that this Motion was denied by the full Commission.

[fol. 40] 18

Intervener denies that the report and order of the Commission in respect to the Florida intrastate rates on logs of the Atlantic Coast Line Railroad Company are arbitrary and unreasonable or beyond the power of the Interstate Commerce Commission, or that the same are invalid and unlawful.

19

This intervener denies subparagraphs a, b, c and d of paragraph 18.

20

Defendant denies the allegations of paragraph 19.

21

Defendant denies the allegations of paragraph 20.

22

Answering paragraph 21, intervener admits that the order of the Interstate Commerce Commission to abandon the rates prescribed by the so-called Cummer scale in Florida and to use other rates which the Commission had determined, would be reasonable and not unduly prejudicial against interstate commerce. The rates which are prescribed by the Commission are not higher than those applicable in interstate commerce, nor are they higher than those applicable in like intrastate commerce in neighboring states, and such changes as may be wrought by the Interstate Commerce Commission's order, will be for the purpose of removing an unjust and unlawful discrimination against interstate commerce and against interstate shippers, and such order will take from Florida manufacturers of lumber no benefit which they are now lawfully entitled to have.

[fol. 41] The other allegations of this paragraph are denied.

Further answering the said bill, intervener avers:

(1) That under the so-called Cummer scale of rates, that is the Florida intrastate log scale for not exceeding one hundred and seventy (170) miles, the Florida producer of lumber is given a great advantage over his competitor in the State of Georgia. To illustrate: for one hundred and seventy miles, the maximum distance of the Cummer scale, the Florida rate on a car of 50,000 pounds, is $18.50, and the interstate rate for the corresponding distance is $47.50. The Florida scale is less than one-half of the scale applicable in interstate commerce. The State of Florida, because of the nature of its traffic conditions, generally has higher rates than thos- which apply on the same commodities for similar distances in other States in the Southeast. The log rates prescribed by the Cummer scale are the lowest in the Southeastern territory, and intervener avers that it would be wholly impracticable for a Georgia producer of lumber to buy logs in Florida and have them carried to his mill in Georgia, for to do that would put a charge on the carriage of about two and a half times as much as the charge would have been if the logs had moved a like distance under similar circumstances in the other direction to a Florida destination. The inevitable result of this is to prevent movement of logs from Florida into Georgia.

(2) Intervener avers that the lumber which is manufactured in Georgia out of logs brought from Florida points of origin must bear a tariff or a tax or a charge or a burden commensurate with the aforementioned difference in the transportation of the logs out of which the lumber is manufactured; that this handicap on the Georgia industry is [fol. 42] reflected by the large plants which are located in Florida as compared with those located in Georgia.

(3) Intervener avers that the intrastate rates in Florida under the Cummer scale are so unreasonably low that they cannot be provided as rates on intrastate commerce in Georgia and in the event the Georgia producer hauls logs for a like distance from a point of origin in Georgia to his mill

in Georgia, the same kind of burden will be placed upon the Georgia producer as if the logs had originated in Florida. So that when the Georgia lumber meets the Florida lumber in interstate competition, the Georgia manufacturer is placed at an unreasonable disadvantage in all circumstances.

(4) Intervener avers that there is ample evidence to support all of the findings of the Commission; that this evidence consisted of oral testimony and of exhibits and statistics, all of which were introduced in a closely contested proceeding which consumed a number of days at each of the two hearings, and then another day in the oral argument before the Commission, besides the filing of briefs and the other motions for reconsideration and reargument, which are referred to in the bill.

(5) There was evidence to support the fact that there was standing timber available for purchase to be used for shipment out of the State of Florida and into the State of Georgia. There was evidence to support the suggestions that pending this controversy, standing timber had been purchased by the Florida interests, which timber was than under negotiation by Georgia interests, and this timber was to have been used to manufacture lumber in Georgia. Intervener avers that it would be natural that the Florida lumber manufacturer should outbid the Georgia manufacturer for standing timber in Florida, because the Florida producer has the advantage of the Cummer scale, while the [fol 43] Georgia producer would be at the disadvantage of the interstate scale, to the extent hereinbefore indicated and more fully laid before the Commission.

(6) Intervener avers that, if it be true that the Complainants in this case and their associated companies who intervened in the cause before the Interstate Commerce Commission have acquired their monopolistic holdings in the standing timber in Florida indicated by the allegations of the bill and to sush extent that there is now no more standing timber available for sale—that has been made possible by the existence of the Cummer scale and is one of the patent ills worked by the Cummer scale against interstate commerce.

(7) Furthermore, intervener avers that if the scales of rates were upon equality, the self interest of the present holders of the standing timber in Florida, including the self interest of the complainants themselves, would dictate the sale of that timber to the mills in Georgia, which are nearer to that timber than are the mills in Florida.

[fol. 44] (8) Intervener avers that the mills in Florida having acquired large holding of timber in circumstances which enable them through the Cummer scale to outbid competitors in the State of Georgia, seek to continue to hold an unjust and unreasonable advantage acquired through the misuse of transportation rates—all of which is prejudicial to interstate commerce and to the manufacturers of lumber in Georgia, and contrary to the statutes in such cases made and provided.

9. (a) Intervener avers that in 1921 it, in the discharge of its duties as a public service commission of Georgia, undertook a revision of the Georgia intrastate rates of rail carriers.

The carriers submitted a scale of rates on forest products to be applied without transit and a scale of net rates to be applied on logs and other products under transit arrangements. At the time this was done the Georgia carriers announced their purpose to seek authority to adopt the scale thus submitted for uniform interstate application throughout their several systems to seek the authority of the various state commissions to make effective the same scale on intrastate traffic in other states as well as the State of Georgia.

The Georgia Commission did not approve the rates submitted, but after extensive hearings it issued, on April 25, 1925, an order to become effective June 1, 1925, prescribing certain rates on logs. Those rates, while lower than the scales submitted by the carriers, were somewhat higher than the existing rates in Georgia.

On May 29, 1925, the Georgia Commission suspended the rates prescribed on April 15, 1925, and a further hearing was held. At this rehearing the evidence was directed largely to the matter of discrimination in respect to which the Georgia Commission stated to the Georgia carriers as follows:

"The evidence submitted at the rehearing reveals what is, in the opinion of the Commission, an intolerable situa-
[fol. 45] tion, as regards the rates in Florida, as compared with the interstate rates between Georgia and Florida, and the effect on this situation of the suspended rates authorized in the Commission's order" (Transcript, p. 210).

(b) To illustrate some of the unusual features of the Florida intrastate log rate which is complained of; that scale begins at 1.71c per 100 pounds for a movement of 5 miles and the same rate continues through the 45 mile distance while the corresponding interstate rate begins at 2.5c for the 5 miles distance and is graduated, being at 4c for 25 miles and 4.5c for 45 miles; at 170 miles the Florida rate is 3.70c per 100 pounds and the corresponding interstate rate is 9.5c per 100 pounds, 170 miles being the maximum distance to which this scale is applicable; the rate for 180 miles becomes 8.33c per 100 pounds as compared with 3.7c per 100 pounds for 170 miles; the Florida intrastate rate on logs is very much less than its intrastate rate on short logs; the rate on short logs begins at 2.13c for 5 miles while on logs it begins at 1.71c and at 170 miles the rate on short logs is 6.25c and on logs it is 3.71c.

(c) The Florida scale which is complained of, when compared with other like commodities which usually take the same rates, show the same disparity; for instance, the rate on brick begins at 3c for the distance of 5 miles while the rate on logs is 1.71c for the same distance and at 170 miles the rate on brick is 10c per 100 pounds while the rate on logs is 3.70. Even greater disparities are shown in the matters of lime, sand and cement.

Reference is made to exhibits 11, 18, 19 and 20 of the record before the Commission and to the testimony of the wit-
[fol. 46] ness Perrin beginning at page 210 of the transcript.

(d) If the Florida intrastate scale on logs should be adopted for interstate application, the present revenue of $27.50 for a haul of 50 miles would be reduced to $11.55. This would represent less than one-half of the present interstate revenue and it would mean that the revenue per car on logs for this haul would be about one-third of the

revenue on a similar haul of brick and considerably less than one-third of the revenue on sand, gravel or lime and less than one-fifth of the present revenue on cement.

(3) If the present intrastate log scale in Florida should be adopted for interstate application between Florida and Georgia, the per car revenue on logs under the present interstate scale would be reduced for a haul of 100 miles from $38.50 to $14.30. This figure is less than one-third of the revenue derived for a similar movement of brick intrastate in Georgia, or on gravel, sand and lime, and about ¼ of the revenue derived on a similar movement of cement.

10

This intervener avers that the contract between the Atlantic Coast Line Railroad Company and the Carpenter-O'Brien Company—which was filed as Exhibit No. 13 in the proceeding before the Commission contains the following clause:

"It is further mutually covenanted and agreed by and between the parties hereto, that this contract is made pursuant and subject to all of the laws of the United States and [fol. 47] of the State of Florida, and that any change, amendment, alteration, or cancellation hereof, deemed, required or rendered necessary by any law of the United States, or the State of Florida, or by virtue of the judgment of any order of Court or Commission of competent jurisdiction, shall not be deemed a breach of the terms and conditions of this agreement."

Your intervener avers that any change which is worked in the rates mentioned in the contract by the order of the Interstate Commerce Commission was anticipated by the parties themselves and such change is within the contemplation of the contract.

Your intervener avers that under the terms of the contract with the Carpenter O'Brien Company, referred to above, the rates known as the "Cummer Scale" were to be applicable until one billion (1,000,000,000) feet of timber has been cut. This, of itself, was an improper basis of rate making, and, this intervener believes that the one billion feet has been either entirely cut or very nearly so.

Wherefore this intervener prays that the bill be dismissed, and the prayers of the complainants be denied.

Georgia Public Service Commission, per Jas. A. Perry, Chairman. Jas. A. Perry, Atty. for Georgia Public Service Commission.

[fol. 48] *Duly sworn to by Jas. A. Perry. Jurat omitted in printing.*

[fol. 49] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Jan. 3, 1929

The Interstate Commerce Commission, defendant in the above-mentioned suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I. Answering paragraphs I, II, and III of the bill of complaint, the Commission admits, for the purpose of this suit, that the allegations therein contained are true.

II. Answering paragraph IV to XXII, inclusive, of the bill of complaint, the Commission admits and alleges that it made the report and order dated August 2, 1928, referred to in paragraph XV, a copy of which it attached to and made a part of the bill of complaint as Appendix A; that said report and order were made entered in a proceeding before the Commission, entitled Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, docket No. 18364, and said report is published at 146 [fol. 50] I. C. C. 717-725; that the Commission refers the Court to the text of said report and order for full, complete, and accurate information concerning the contents of said report and order and for a description of the proceedings before the Commission upon which the report and order were and are based; that at hearings in said proceed-

ing a large volume of testimony and other evidence bearing upon the matters covered by said report and order was submitted to the Commission for consideration; that at said hearings and subsequently, both orally and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of the parties thereto by their counsel, whereupon the Commission determined said matters and entered and served upon the parties to said proceedings the aforesaid report and order of August 2, 1928; that said report and order included the Commissioner's findings of fact, decisions, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said order is based.

The Commission further alleges that the findings and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the Commission in said proceedings as aforesaid.

The Commission further alleges that in making said report, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said proceeding by their counsel.

[fol. 51] The Commission further alleges that the said order of August 2 was not made or entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

III. Further answering paragraph XVIII to XXII, inclusive, of the bill of complaint, the Commission denies that said order of August 2, is either unlawful or void for the reasons, or for any of the reasons set forth in said paragraphs. The Commission particularly denies that the said order of August 2 will cause either irreparable damage or irreparable injury, as stated in paragraph XXI of the bill

of complaint, unless said order of August 2 is enjoined and set aside by the Court.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and order of August 2, which report and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said bill of complaint be dismissed.

[fol. 52] Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, of Counsel.

Duly sworn to by Balthasar H. Meyer. Jurat omitted in printing.

[fol. 53] IN UNITED STATES DISTRICT COURT

No. 511

BROOKS-SCANLON LUMBER CORP., WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY

versus

UNITED STATES OF AMERICA et als.

No. 512

WILSON LUMBER CO. OF FLORIDA

versus

UNITED STATES OF AMERICA et als.

and

No. 514

STATE OF FLORIDA

versus

UNITED STATES OF AMERICA et als.

ORDER CONSOLIDATING CAUSES—Jan. 3, 1929

On motion of Charles E. Cotterill, of counsel for the plaintiffs herein,

It is ordered that the above numbered and entitled causes be and the same are hereby consolidated for the purpose of trial.

[fols. 54 & 55] Minute entry or argument and submission omitted in printing.

[fol. 56] IN UNITED STATES DISTRICT COURT

[Titles omitted]

OPINION—Filed Jan. 17, 1929

Three bills, one by the State of Florida, one by the Wilson Lumber Company, and one by Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company, were brought against the United States and the Interstate Commerce Commission to enjoin and set aside so much of an order of the Commission, dated August 2nd, 1928, as required the Atlantic Coast Line Railroad Company to establish and put in force in intrastate commerce within the State of Florida, certain rates on logs which were, in the same order, fixed as reasonable in interstate commerce. The Georgia Public Service Commission was allowed to intervene in all three cases in behalf of the order attacked. The bills make similar allegations of fact and substantialy similar contentions as to the invalidity of the [fol. 57] order. The State of Florida is especially concerned because of its claim of an unwarranted invasion of its control over intrastate freight rates, and the other complainants, because of their interest as shippers, in continuing the much lower rate superseded by the order. The contentions of invalidity make these main questions: 1. Is the order within the lawful powers of the Commission? 2. Is it within the issues sought to be investigated and made after full hearing of them? 3. Is it arbitrary because unsupported by sufficient evidence? 4. The State of Florida and Wilson Lumber Company, construing the order as abrogating the Coast Line's intrastate log rates throughout the State of Florida rather than within the limited territory for which new interstate rates were fixed, make the

special and newly raised contention of an entire want of evidence to support so broad an order. The assailed order arose out of a complaint filed by the Georgia Public Service Commission against the Atlantic Coast Line Railroad Company touching Coast Line interstate rates on logs from Florida to Georgia and intrastate rates thereon within Florida. The Governor of Florida was duly notified thereof and the Florida Railroad Commission appeared in defense of its rates. The other defendants here, with other sawmill operators and railroad companies, intervened, but expressly without enlarging the issues proposed. The proceedings had are clearly stated in the report of the Commission, together with the history of the rates involved and the scope of the evidence taken, and these need not be repeated. The result was an order passed by Division 4, afterwards confirmed by the whole Commission, fixing new interstate rates from points on the Atlantic Coast Line railroad north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations on its lines in Georgia, and then ordering a conformity thereto of intrastate rates.

[fol. 58] 1. The order touching the intrastate rates is based upon a finding that the former intrastate rates "did and would result in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce." This finding is in the very words of Section 13 (4) of the Interstate Commerce Act taken from the Transportation Act of 1920. The Sub-section declares that when, in investigating a rate made or imposed by authority of any State, such a condition is found, the Commission "shall prescribe the rate, fare or charge * * * thereafter to be observed in such manner as in its judgment will remove such advantage, preference, prejudice or discrimination. Such rate, fare or charge shall be observed * * * the law of any State or the decision or order of any State authority to the contrary notwithstanding." Assuming for the present the propriety of the preliminary finding, the order here made is clearly within the duty prescribed and

the power given by the quoted words. No attack has been made before us upon the constitutionality of the enactment. Such an attack would probably be sufficiently met by what was said in the suit of Wisconsin Railroad Commission v. C., B. & Q. R. R. Co., 257 U. S. 563. We recognize that because of the practical involvement and competition of almost all business done interstate with similar business done intrastate, that the power here given may easily lead to an almost complete fixing of intrastate rates by the Interstate Commerce Commission. This results from the precedence to be given, under the Constitution, to regulations by Federal power of what is under Federal control over conflicting regulations by State power of what is under State control. [fol. 59] Undue encroachment of Federal power is to be guarded against in this as in other fields by a scrupulous care to act with caution and comity, and particularly where the activity is only incidental to a superior Federal authority as is the case in the direct prescription of an intrastate rate, must the intrusion upon State authority be limited to the actual, plain and substantial necessities of the particular situation.

The contention that the intrastate rates here investigated by the Commission were not those contemplated by Section 13 (4) because they were voluntarily initiated by the carrier, and therefore not "made or imposed by authority of any State," within the description of Section 13 (3), we must overrule. The rate as originally proposed by the carrier was required to be substantially modified before it was allowed filed by the Florida Railroad Commission; and independently of that fact, its status as a lawful rate depended upon its allowance by the Florida Commission. It was established as a rate in accordance with and under the laws of Florida, and was for this reason alone a rate made, though not imposed, by authority of that State.

The further contention is made that the power in the Interstate Commerce Commission to directly prescribe an intrastate rate, which was introduced by the Transportation Act, is to be limited to cases of general horizontal raises in State rate systems, based on a finding that the State rate system is prejudicing interstate commerce by not affording its fair proportion of financial support to the carrier, and that such findings are appropriate only to investigations

instituted by the Commission itself. We think the contention unsustainable in whole or in part. It may be true, as stated in the argument, that all previous direct prescriptions [fol. 60] of intrastate rates by the Commission have been on its own initiative, but the language of the Act is without any such restriction. Section 13 (4) begins: "Whenever, in any such investigation the Commission, after full hearing, finds." The words "such investigation" plainly relate to the preceding Section, 13 (3), enacted at the same time, which in turn begins thus: "Whenever in any investigation under the provisions of this Chapter * * * there shall be brought in issue any rate * * * made or imposed by any State." The preceding, older, portions of Section 13 deal with investigations initiated by any person, firm or corporation, or by the common carrier, or by a railroad commission, or the Interstate Commerce Commission itself. Inevitably Sub-section 4 includes State rate investigations of all origins. Further, these words are not especially descriptive of general horizontal raises in all rates, but the Commission is authorized to "prescribe the rate, fare or charge, or maximum or minimum, or maximum and minimum thereafter to be charged, and the classification, regulation or practice thereafter to be observed." Under this any particular rate may be separately dealt with, and even classifications and practices in almost infinite detail, in such manner as in the Commission's judgment will remove the unjust discrimination against interstate commerce which is found to exist. It is true that in the case of Wisconsin Railroad Commission v. C., B. & Q. R. R. Co., supra, the investigation was instituted by the Commission itself, and the discrimination there found related to an unfair lowness in the general level of intrastate passenger fares, and that the language and argument of the decision are colored by these facts and adapted to them. But there is no holding in that case, or those following it, that the only unjust discrimination against interstate commerce which is remediable under Section 13, Sub-section 4, by direct prescription [fol. 61] of intrastate rates was such an one as there involved. On the contrary the effort in that opinion was to prove that such a discrimination was to be added to those already familiar, arising not from insufficient returns to the carrier from the intrastate rates, but from discrim-

inatory inequalities between them and the interstate rates, such as existed in the case at bar and such as were dealt with in Houston Railroad Co., v. United States, 234 U. S. 342; American Express Co., v. Caldwell, 244 U. S. 617, and Illinois Central Railroad Co., v. Public Utilities Commission of Illinois, 245 U. S. 493.

2. Section 13 (4) conditions the direct prescribing by the Commission of an intrastate rate upon there having been a full hearing in such an investigation as Sub-section 3 authorizes. Sub-section 3 applies to an investigation in which "a rate made or imposed by authority of any state shall have been brought in issue," and requires that the state interested shall be notified. The State of Florida was in this instance notified and appeared by its Commission. By Section 13 (1) (2) of the Act, and by the rules of practice of the Commission, the issues for investigation are to be defined in writing, by quasi pleadings of the parties, or by orders of the Commission as to what shall be investigated. The issues in this matter were defined by the original complaint of the Georgia Public Service Commission, unchanged by the interventions or answers, or by any directions of the Interstate Commerce Commission. This complaint, besides attacking the intrastate rates on logs from all points on the Coast Line Railroad in Florida to all points in Georgia, specifically exhibited and assailed the Florida intrastate rates on logs (see paragraph 11) both as given undue and unreasonable preference and advantage to intrastate ship-[fol. 62] pers, and as being unduly prejudicial to interstate shippers, but also as causing "undue and unreasonable, and unjust, discrimination against interstate commerce in violation of Section 13 of the Interstate Commerce Act." The prayers of the complaint did not ask a raise of the intrastate rate, but did ask parity between interstate and intrastate rates and that the aforesaid violation of the Interstate Commerce Act be stopped. If any of the violations of the Act complained of as being such as are mentioned in Section 13 (4) were found to exist, the remedy to be applied is, by the words of the Sub-section, left to the judgment of the Commission. It was not necessary that the complaint should select and pray for a particular solution of the difficulty. To do so might be thought to confine the Commis-

sion to the use of that remedy only. The complaint went far enough in stating the facts and in asserting that a discrimination against interstate commerce existed as a result. The State rate was thereby clearly put in issue and the power of the Commission under Section 13 (4) invoked.

We do not think the oral statement attributed to the Chairman of the Georgia Commission during the examiner's hearing, to the effect that he desired the lowering of the interstate rate rather than the raising of the intrastate rate, either changed the issue or limited the action of the Interstate Commerce Commission. Neither the Examiner nor the counsel in their subsequent arguments before the Commission understood that the claim of discrimination by the intrastate rates against interstate commerce had been eliminated. If it existed, whether removal of it ought to be accomplished by lowering interstate rates or by raising the intrastate rates was a question for the decision of the Commission alone, and not of the contesting parties. On that question the remunerativeness to the carrier of the State rates was plainly a relevant matter and was of importance [fol. 63] on that question only. The Florida Commission itself presented evidence touching it. The hearing was, therefore, not prevented from being full and fair by any mistake of the participants as to the issues that were to be investigated.

3. We find substantial evidence to sustain the conclusions of the Commission on all material points. The chief contention to the contrary is that the evidence discloses such complete ownership of the sources of logs in Florida by Florida mills as to insure their moving to their owners and leaving no substantial amount which could move to Georgia on the interstate rates fixed, with the result that in no real or fair sense could it be held that the law intrastate rates did prejudice or discriminate against interstate commerce or interstate shippers. This contention is well supported so far as concerns large tracts of timber, logs from which would move in train loads, as do most of those in Florida now handled by the Coast Line Railroad. But the rate assailed is not a train load but a car-load rate, and the evidence abundantly justified the conclusion that there is an

indefinite quantity of what is called "Scattered timber," not yet cut, in north Florida, which is not owned by Florida mills and which the Commission could find would be as likely to move to Georgia as to Florida points if a rate parity were afforded.

4. A more troublesome question is that raised by the State of Florida and Wilson Lumber Corporation (paragraph 18e of the one bill and paragraphs 7 and 10 of the other) that the evidence, and the findings of the Commission, related only to north Florida, while the order complained of fixed intrastate rates for the whole of Florida, and was unjustified according to the rulings in Wisconsin R. R. Commission v. C. B. & Q. R. R., 257 U. S. 563, and Illinois Cen- [fol. 64] tral R. R. Co. v. Public Utilities Comm. of Ill., 245 U. S. 493. From a cursory search of the record it appears to be true that the evidence, though often broadly phrased, really related to the logs in north Florida, a territory described by the Commission in its order establishing new intrastate rates as north of and including Jacksonville, Gainesville, Butnett's Lake and High Springs. No interest, apparently, was taken by any one in the territory more remote from the Georgia line, evidently because the class of logs involved could, under no circumstances, be profitably moved so great a distance. Although the complaint covered the whole of Florida, the real contention, and the Commission's own action upon the interstate rates were limited to that northern territory, and the evidence related only to it. The precise condition in south Florida, and whether there could or would be any interstate commerce in logs from that region, were never investigated. The language of the order passed touching the intrastate rates can be construed as fixing rates for the whole state. The two bills above referred to so construe it. The respondents in answering the bill of the State of Florida seem to deny this construction. The answers to the bill of Wilson Lumber Company vary. Those of the Interstate Commerce Commission and Georgia Public Service Corporation do not commit themselves to any construction, but leave the order to speak for itself. We think it can also be construed as limited to points of origin on the Coast Line railroad north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs. The existence and availability of logs at such origins was fully

investigated, and at others not. The Commission confined its order on interstate rates expressly to these origins, and dealt with the intrastate rates only by reference to the order fixing the interstate rates, declaring that the rates "in in-[fol. 65] trastate commerce within the state of Florida shall be the same as those prescribed in the next preceding paragraph hereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia. The preceding paragraph fixes only one-way rates, and was limited to origins on the Coast Line railroad in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs. The destinations in Georgia there referred to were, of course, excluded by the words "within Florida" in the order as to intrastate rates. Otherwise the intrastate rates were to be the same. Since the first construction would probably nullify the order, we think we should follow the established rules in construing contracts and statutes, holding to the latter construction which would uphold it. Territorial indefiniteness of the order was held aided by the other proceedings in American Express Co. v. Caldwell, 244 U. S. 617.

The serious effect of altering the rates upon the business of complainants and their investments made on the faith of them is strongly urged. Such things may be considered by the Commission in determining what is just and reasonable, or undue or unfair, without vitiating their finding (I. C. C. v. Union Pacific R. R. Co., 222 U. S. 541), and were considered in this case. But such considerations cannot be the sole basis of a rate order (Southern Pacific Co. v. Interstate Commerce Commission, 219 U. S. 433). A fortiori they alone cannot avail in this court to overturn an unfavorable order.

We find no sufficient cause to enjoin and set aside the order here complained of.

This January 17th, 1929.

Sam'l H. Sibley, U. S. Judge.

[fol. 66] IN UNITED STATES DISTRICT COURT

In Equity. No. 514

THE STATE OF FLORIDA, Complainant,

vs.

THE UNITED STATES and THE INTERSTATE COMMERCE COMMISSION, Defendants

DECREE—Filed Jan. 17, 1929

This case was submitted for final decree to a court of three judges, to-wit: Hon. Richard W. Walker, United States Circuit Judge, Hon. Benjamin C. Dawkins, United States District Judge, and Hon. Samuel H. Sibley, United States District Judge. After hearing evidence and argument, and the Court being fully advised, it is, for the reasons stated in an opinion this date filed, considered and decreed that the relief prayed by the complainant be denied and the bill be dismissed.

This 17 day of January, 1929.

R. W. Walker, United States Circuit Judge. Ben C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

[File endorsement omitted.]

[fol. 67] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR REHEARING

To the Honorable Judge of the District Court in and for the Northern District of Georgia, Atlanta Division, in Chancery Sitting:

Now comes the State of Florida by Fred H. Davis, its Attorney General, and A. S. Wells, E. S. Matthews, and Mamie G. Eaton as and constituting Florida Railroad Commission and T. T. Turnbull, special counsel for said Florida Railroad Commission designated, and files and presents

this, its Petition for Rehearing in the above entitled cause, and as grounds therefor asserts the following:

1. (a) That prior to October 5th, A. D. 1928, the Atlantic Coast Line Railroad Company, purporting to comply with the order entered August 2nd, 1928, by the defendant, Interstate Commerce Commission and sought to be enjoined, set aside and annulled in this proceeding, did file with said Interstate Commerce Commission its Supplement #10 to J. H. Glenn's Agent's Southern Lumber Tariff I. C. C. A-659, wherein and whereby the said Railroad Company purported to cancel throughout the State of Florida, the scale of rates for many years in force and effect under the laws of the State of Florida for the transportation of logs except cedar, and to put into effect on October 10th, 1928, between [fol. 68] all points on its lines in intrastate traffic within the State of Florida, the same rates which were prescribed by the order of said Interstate Commerce Commission for application from points on the line of said Railroad Company in said State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, Florida, to destinations on its lines in the State of Georgia.

(b) That prior to October 5th, A. D. 1928, said Railroad Company likewise purporting to comply with the order of said Interstate Commerce Commission, did file with said Interstate Commerce Commission, its Supplements 4, 5, 6 and 7 to its Florida local tariff No. 20, I. C. C. B-2466 and preceding issues thereof, wherein and whereby the said Railroad Company purported to cancel throughout the State of Florida, the scale of rates for many years in force and effect under the laws of Florida for the intrastate transportation of "ash, gum, hickory, oak, pine and cypress logs not over six feet in length" in carload quantities (hereinafter sometimes referred to as Short Logs), and to put into effect on October 10th, 1928, between all points on all of its lines in intrastate traffic within the State of Florida, rates substantially equivalent to the rates prescribed by the order of said Interstate Commerce Commission for the transportation of logs, except walnut, cherry and cedar, from all points on its lines in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Georgia.

(c) That the said rates so prescribed by the August 2nd, 1928 order of said Interstate Commerce Commission for application north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations in the State of Georgia, were materially higher than the said Florida intrastate rates established under and pursuant to the Laws of Florida for the transportation of logs except cedar, and materially higher than the rates established under and pursuant to the Laws of Florida for the intrastate transportation of Short Logs as aforesaid.

[fol. 69] (d) That such proceedings were had before the Interstate Commerce Commission so that the respective effective dates of so much of said order fixing rates for the transportation of logs intrastate between points in Florida, and the alleged cancellation of said intrastate rates on logs and short logs, and of the alleged application of the new rates sought to be established in lieu thereof, were postponed until February 8th, 1929.

2. That after the rendition and entry of the decision, opinion and final decree of this Court herein, your petitioner recognizing that the said decision, opinion and decree was the law of the land unless and until the same was modified, set aside or reversed, your petitioner, acting by and through the said Railroad Commissioners of the State of Florida, on, to-wit, the 30th day of January, 1929, did make and cause to be entered in the records of said Railroad Commission an order wherein and whereby it was declared and decreed that so long as the said decision, opinion and decree of this Court should remain in force and unreversed, the rates prescribed by said order of said Interstate Commerce Commission for the transportation in one direction, northbound, of logs under the following tariff description, to-wit, "logs, except walnut, cherry and cedar, in carload quantities minimum weight 40,000 pounds" from points on the lines of said Railroad Company in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations on its lines in the State of Georgia, would on and after February 8th, 1929, supersede the Florida intrastate scale of rates condemned by said Interstate Commerce Commission insofar as said Florida intrastate scale of rates applied to the transportation of logs except cedar moving northbound, in

one direction, from point of origin on the lines of the said Railroad Company north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Florida for distances not exceeding 170 miles.

3. And having so recognized the binding force and effect of the order of said Interstate Commerce Commission as construed and limited by the decision, opinion and decree of this Court, the said order of said Florida Railroad Com- [fol. 70] missioners did declare that all existing Florida intrastate rates for the transportation of logs, except cedar, and for the transportation of Short Logs, should continue in force and effect except to the limited extent that such State rates were superseded by the scale of rates prescribed by the order of said Interstate Commerce Commission as limited for application in territorial scope, in direction of movement and otherwise, by the decision, opinion and decree of this Court.

That a copy of the order #979 of the Florida Commission is hereto attached, marked Exhibit A, and made a part hereof.

4. That no rate on Short Logs was in issue in said proceedings before said Interstate Commerce Commission in Docket #18364 and said Interstate Commerce Commission, prior to January 31, 1929, disclaimed jurisdiction over rates for the transportation of Short Logs instrastate between points in Florida. That said decision, opinion and decree of this Court construed and limited the application of said order of said Interstate Commerce Commission in territorial scope and otherwise, as is set forth in said decision, opinion and decree and hereinabove set forth, yet, notwithstanding such fact, the said Atlantic Coast Line Railroad Company, to-wit: prior to January 31st, 1929, asserted and claimed that said order of said Interstate Commerce Commission was applicable to the transportation of Short Logs and was applicable to the transportation of logs, except walnut, cherry and cedar moving intrastate over all its lines in all directions from all points throughout Florida. That said Railroad Company declared its intention to demand, charge and collect, on and after February 8th, 1929, from all shippers of Short Logs and all shippers of logs, except walnut, cedar and cherry,

between all points on its lines in Florida, the same scale of rates prescribed by the order of said Interstate Commerce Commission for transportation of logs from points in Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations in Georgia.

5. That under and pursuant to the Laws of Florida it is the duty of the Railroad Commission in the name of the State of Florida, and in the courts of the State of Florida, to enforce by injunction or otherwise, all intrastate rates [fol. 71] established under and pursuant to the Laws of Florida except to the extent that such rates should have been superseded by the paramount Federal power. That pursuant to such duty, and on, to-wit, January 31, 1929, there was filed in the Circuit Court in and for Duval County, Florida, in the name of the State of Florida, as complainant, acting by and thru the said Railroad Commission and the said Attorney-General, a certain Bill of Complaint against said Railroad Company as defendant, and wherein the relief sought was injunctions, temporary and permanent, enjoining and restraining said Railroad Company from demanding, charging or collecting on or after February 8, 1929, any rates or charges higher than the existing Intrastate Rates for the transportation of logs, except cedar, in carload quantities, except from points of origin within the area to which this Court by its said decision, opinion and decree held said order of said Interstate Commerce Commission to be applicable; and to enjoin and restrain the said Railroad Company from demanding, charging or collecting on or after February 8, 1929, in intrastate traffic, the said scale of rates prescribed by said order of said Interstate Commerce Commission except for the transportation, northbound, from points of origin within the area to which this court held said order of August 2nd, 1928, to be applicable; and likewise to enjoin and restrain the said Railroad Company from demanding, charging and collecting on or after February 8th, 1929, any rates or charges higher than the existing intrastate rates on Short Logs moving intrastate in Florida between all points on the lines of said Railroad Company in Florida.

6. That thereafter, on February 4th, 1929, the said Railroad Company filed its Petition and Bond for the removal of the said last described suit from the said State Court to the United States District Court for the Southern District of Florida but said State Court denied said Petition for Removal and retained jurisdiction of said cause and thereupon the said State Court issued said injunctions substantially as was prayed.

7. That thereafter to-wit: on February 5, 1929, the said Interstate Commerce Commission by its order dated that day did amend its said order of August 2, 1928, so that said last described order, as amended, should expressly declare [fol. 72] that Short Logs were not within the purview thereof.

A true copy of said order dated February 5, 1929, is hereto attached as Exhibit B and made a part hereof.

8. That thereafter on February 7, 1929, the said Atlantic Coast Line Railroad Company, as Complainant, did file in the United States District Court for the Southern District of Florida, its ancillary bill of complaint wherein the said A. S. Wells, E. S. Matthews and Mamie G. Eaton, Members of the Railroad Commission of Florida, were named as defendants and wherein and whereby the said Railroad Company sought to effect a removal of said State Court suit to said United States District Court and also to enjoin the said A. S. Wells, E. S. Matthews and Mamie G. Eaton from proceeding further in the prosecution of said State Court suit; and also sought a decree of said United States District Court declaring that said injunction issued by said State Court to be null and void. And on said February 7, 1929, the said Railroad Company did present said ancillary Bill to the Hon. W. B. Sheppard, Judge of the District Court of the United States for the Northern District of Florida, theretofore lawfully assigned to and sitting as Judge for the Southern District of Florida, and did move said court to issue the temporary injunctions therein prayed.

9. That on, to-wit: February 7, 1929, the said Railroad Company did likewise file in the United States District

Court for the Northern District of Florida its original bill of complaint wherein and whereby the said Railroad Company (notwithstanding the decision, opinion and decree of this Court) did assert that the order of said Interstate Commerce Commission, dated August 2, 1928, required it to demand, charge and collect for the transportation of logs, except walnut, cherry and cedar, intrastate in Florida, from all points of origin on its lines in Florida to all destinations on its lines in Florida, moving in all directions, the same scale of rates as were prescribed by said order for application on interstate movements of logs, except walnut, cherry and cedar, northbound, from all points of origin north of Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations in Georgia. And said Railroad [fol. 73] Company in and by said bill, among other things, prayed that the said defendants therein named be temporarily and permanently enjoined from interfering with the demanding, charging and collecting by it of the said last described rate between any point of origin on its lines in Florida and any destination on its line in Florida, in any direction.

That on the same day, to wit: February 7, 1929, the said Railroad Company did present the last mentioned bill to the Hon. W. B. Shepard, as Judge of said Northern District of Florida, and at the same time did move said Court to issue the temporary injunctions therein prayed.

10. That the said ancillary bill referred to in paragraph 8 above and the said bill referred to in paragraph 9 above were presented to the said Judge at one and the same time; that after the filing and presentation thereof and before any orders had been made by said court thereon the said Interstate Commerce Commission, without notice to your Petitioner, on, to wit, February 7, 1929, did make and direct to be published at 10 o'clock a. m. on February 8, 1929, a certain order, wherein and whereby said Interstate Commerce Commission did so amend its said order of August 2, 1928, so that the same as amended required said Railroad Company to apply the scale of rates for the transportation of logs, except walnut, cherry and cedar logs and except short legs, moving in carload quantities, between all points of origin in the State of Florida on the lines of said Rail-

road Company in all directions to all destinations on the lines of said Railroad Company in Florida, the same as said scale of rates prescribed by said order of August 2, 1928, for application to the transportation interstate of such logs in such quantities from points north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs north bound to destinations in Georgia. That a copy of said order of February 7, 1929, is hereto attached, marked Exhibit C, and made a part hereof.

11. That afterwards, to wit: on February 8, 1929, the said ancillary bill so filed by said Railroad Company in the said United States District Court for the Southern District of Florida and the said Bill so filed by said Railroad Company in the United States District Court for the Northern [fol. 74] District of Florida were amended by said Railroad Company and answers and motions to dismiss were duly filed by your Petitioner to the said bill and ancillary bill as amended as aforesaid; and thereupon said United States District Courts respectively, did make and enter orders denying the said injunctions prayed by said bills, respectively, and dismissed both of said bills.

That on February 13th, 1929, the said United States District Court for the Southern District of Florida, upon the Petition of said Railroad Company, did allow an appeal from the decree of said last described Court of the United States Circuit Court of Appeals for the Fifth Circuit and the said appeal is now pending.

12. That the purpose, intent and effect of said order of the Interstate Commerce Commission of August 2, 1928, as amended by said order of February 7, 1929, is to repudiate, refute and deny the construction and limitation placed upon the said order of August 2, 1928, prior to said amendment of February 7, 1929; and said order, as amended as aforesaid, constitutes an attempt on the part of said Interstate Commerce Commission to fix and establish intrastate rates from all points of origin on the lines of said Railroad Company in Florida to all destinations on the lines of said Railroad Company in Florida in all directions.

13. That said order of said Interstate Commerce Commission, as amended as aforesaid, insofar as it seeks to regulate intrastate rates in Florida, is null and void and of no

force and effect for the several specific reasons set forth in your petitioner's bill of complaint heretofore filed herein, reference to which is hereby prayed as if the same was specifically set forth herein in haec verba, and for said reasons and under said decision, opinion and decree of this court ought to be wholly enjoined, set aside and annulled.

14. Your Petitioner herewith tenders and presents its supplemental bill in the nature of a bill of review wherein your petitioner upon re-hearing seeks to restrain, enjoin, set aside, declare null and void and of no effect said order of the Interstate Commerce Commission of August 2nd, 1928, as amended by its order of February 7th, 1929.

[fol. 75] Wherefore your petitioner prays as follows:

(a) That this Court entertain this Petition for re-hearing.

(b) That the Final Decree of this Court entered January 17, 1929, be opened, vacated and set aside, and that a re-hearing be granted to your Petitioner herein.

(c) That your Petitioner be permitted and allowed to file herein its supplemental bill in the nature of a bill of review which herewith has been tendered and presented, to properly bring before this court the new facts, matters and things herein specifically set forth all of which are material and not cumulative; and all of which occurred after the rendition of this Court's decree on January 17, 1929; and had such facts, matters and things existed prior to January 17, 1929, a decree would have been entered in favor of your Petitioner.

(d) That the defendants, United States of America and Interstate Commerce Commission, and the Intervener, Georgia Public Service Commission, be ordered and required on a day certain to show cause why the prayers in this petition should not be granted.

(e) That your Petitioner may have such other and further relief as to this Court may seem proper and the nature of the case may require.

And your Petitioner will ever pray, etc.

State of Florida, by Doyle E. Carlton, Governor. A. S. Wells, E. S. Matthews, Mamie G. Eaton, as and Constituting the Railroad Commission of the State of Florida. For the State of Florida: Fred H. Davis, Attorney General, State of Florida. Theo. T. Turnbull, Special Counsel for Florida Railroad Commission.

Recd. in Clerk's Office Feb. 21, 1929.

[fol. 76] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL BILL OF COMPLAINT—Feb. 21, 1929

To the Honorable Judge of the District Court in and for the Northern District of Georgia, Atlanta Division, in Chancery Sitting:

State of Florida, by Fred H. Davis, its Attorney-General, and A. S. Wells, N. S. Matthews and Mamie G. Eaton, as and constituting Florida Railroad Commission, by T. T. Turnbull, Special Counsel designated by them, bring this, its Supplemental Bill of Complaint in the nature of a Bill of Review against the United States of America and Interstate Commerce Commission, and thereupon your Orator complaining says:

[fol. 77] I

That heretofore, to-wit: on the 27th day of November, A. D., 1928 your Orator filed in this cause its Bill of Complaint (hereinafter called the "Original Bill") against the defendants herein, wherein and whereby your Orator sought to annul, set aside and enjoin that portion of the order (hereinafter called "Said Order"), of the Interstate Commerce Commission entered by it on the 2nd day of August, A. D. 1928, in Docket #18364 entitled "Georgia Public Service Commission vs. Atlantic Coast Line Railroad" (146 I. C. C. 717), wherein and whereby said Inter-

state Commerce Commission attempted to require Atlantic Coast Line Railroad, a common carrier subject to the jurisdiction of the administrative regulatory commission of the State of Florida, to establish, put in force and maintain rates for the transportation of logs, except walnut, cherry and cedar, in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida, the same as those prescribed by said Interstate Commerce Commission as reasonable for transportation in interstate commerce from points in the State of Florida, north of and including, Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations in the State of Georgia. That said "Original Bill" likewise alleged that "Said Order" was entered without first seeking the authority of your Orator so to do.

That answers were filed by the defendants to said "Original Bill," and Georgia Public Service Commission was permitted to intervene and file its answer thereto.

That at the same time your Orator filed its aforementioned Bill of Complaint, two other Bills of Complaint were filed against the Defendants herein; one by the Wilson Lumber Company and the other by the Brooks-Scanlon Corporation, the Wilson Cypress Company and the Cummer Cypress Company. In each of the two last mentioned Bills of Complaint, the relief prayed for was substantially similar to that prayed for in and by your Orator's "Original Bill." That upon your Orator's "Original Bill," and said two other Bills of Complaint coming on to be heard, the same were consolidated for the purpose of final hearing; and after due and regular notice, final hearing was had at New Orleans, Louisiana, before Judges Sibley, Walker and Dawkins, testimony was taken and said cases [fol. 78] submitted. That thereafter, on the 17th day of January, A. D. 1929, an opinion was handed down in said cases so consolidated and orders entered dismissing each of said "Original Bills" which said orders of dismissal by specific reference made the opinion of this Court a part thereof.

The aforesaid proceedings above enumerated all appear of record in this Court, and reference thereto is hereby specifically prayed.

II

That in and by its opinion, this Court, to hold "Said Order," valid, construed "Said Order," insofar as it was applicable to intrastate rates in Florida, as being limited to the territory specifically referred to by the Interstate Commerce Commission in "Said Order," fixing interstate rates from points in Florida to destinations in Georgia, such construction and limitation being confined to one-way traffic north bound from points of origin on the lines of the Atlantic Coast Line Railroad Company in Florida north of and including Jacksonville, Gainesville, Barnett's Lake and High Springs, for distance not exceeding 170 miles. And thereupon and thereby "Said Order" with such construction and limitation was upheld and said "original Bill" dismissed.

III

That Supplemental Bills in the nature of Bills of Review are likewise being filed by The Wilson Lumber Company and by Brooks-Scanlon Corporation. Wilson Cypress Company and Cummer Cypress Company. That certain exhibits will be referred to and mentioned in each of said supplemental bills and likewise in this Bill. That only one set of exhibits will be filed in support of said three (3) Supplemental Bills, in order to avoid encumbering the record of said suits.

IV

(a) That prior to October 5th, A. D. 1928, the Atlantic Coast Line Railroad Company, purporting to comply with "Said Order" entered August 2nd, 1928, by the defendant, Interstate Commerce Commission and sought to be enjoined, set aside and annulled in this proceeding, did file with said Interstate Commerce Commission its Supplement #10 to J. H. Glenn's Agents' Southern Lumber [fol. 79] Tariff I. C. C. A-659, wherein and whereby the said Railroad Company purported to cancel throughout the State of Flordia, the scale of rates for many years in force and effect under the laws of the State of Florida for the transportation of logs except cedar, and to put into effect on October 10th, 1928, between all points on its lines

in intrastate traffic within the State of Florida, the same rates which were prescribed by the order of said Interstate Commerce Commission for application from points on the line of said Railroad Company in said State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, Florida, to destinations on its lines in the State of Georgia.

(b) That prior to October 5th, A. D. 1928, said Railroad Company likewise purporting to comply with the order of said Interstate Commerce Commission did file with said Interstate Commerce Commission, its Supplements 4, 5, 6 and 7 of its Florida local tariff No. 20, L. C. C. B-2466 and preceding issues thereof, wherein and whereby the said Railroad Company purported to cancel throughout the State of Florida, the scale of rates for many years in force and effect under the laws of Florida for the intrastate transportation of "ash, gum, hickory, oak, pine and cypress logs not over six feet in length," in carload quantities (hereinafter sometimes referred to as Short Logs), and to put into effect on October 10th, 1928, between all points on all of its lines in intrastate traffic within the State of Florida, rates substantially equivalent to the rates prescribed by the order of said Interstate Commission for the transportation of logs, except walnut, cherry and cedar, from all points on its lines in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Georgia.

(c) That the said rates so prescribed by the August 2nd, 1928 order of said Interstate Commerce Commission for application north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations in the State of Georgia, were materially higher than the said Florida intrastate rates established under and pursuant to the Laws of Florida for the transportation of logs except cedar, and materially higher than the rates established under and pursuant to the Laws of Florida [fol. 80] for the intrastate transportation of Short Logs as aforesaid.

(d) That such proceedings were had before the Interstate Commerce Commission so that the respective effec-

tive dates of so much of said order fixing rates for the transportation of logs intrastate between points in Florida, and the alleged cancellation of said intrastate rates on logs and short logs, and of the alleged application of the new rates sought to be established in lieu thereof, were postponed until February 8th, 1929,

V

That after the rendition and entry of the decision, opinion and final decree of this Court herein, your Order in compliance therewith and recognizing that said decision, opinion and decree was the law of the land unless and until the same was modified, set aside or reversed, on, to-wit: the 30th day of January, 1929, did make and cause to be entered in the records of said Railroad Commission, an order, wherein and whereby it was declared and decreed that so long as the said decision, opinion and decree of this Court should remain in force and unreversed, the rates prescribed by said order of said Interstate Commerce Commission for the transportation in one direction, northbound, to-wit, "logs, except walnut, cherry and cedar, in carload quantities minimum weight 40,000 pounds," from points on the lines of said Railroad Company in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations on its lines in the State of Georgia, would on and after February 8th, 1929, supersede the Florida intrastate scale of rates condemned by said Interstate Commerce Commission insofar as said Florida intrastate scale of rates applied to the transportation of logs except cedar moving northbound, in one direction, from points of origin on the lines of the said Railroad Company north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Florida for distances not exceeding 170 miles.

VI

And having so recognized the binding forces and effect of the order of said Interstate Commerce Commission as construed and limited by the decision, opinion and decree

of this Court, the said order of said Florida Railroad Com-
[fol. 81] mission did declare that all existing Florida intrastate rates for the transportation of logs, except cedar, and for the transportation of Short Logs, should continue in force and effect to the limited extent that such State rates were superseded by the scale of rates prescribed by the order of said Interstate Commerce Commission as limited, for application in territorial scope, in direction of movement and otherwise, by the decision, opinion and decree of this Court.

That a copy of the order #979 of the Florida Commission is herewith tendered as Exhibit A, and made a part hereof.

VII

That no rate on Short Logs was in issue in said proceedings before said Interstate Commerce Commission in Docket #18364 and said Interstate Commerce Commission, prior to January 31, 1929, disclaimed jurisdiction over rates for the transportation of Short Logs intrastate between points in Florida. That said decision, opinion and decree of this Court construed and limited the application of "Said Order" in territorial scope and otherwise, as is set forth in said decision, opinion and decree and hereinabove set forth, yet, notwithstanding such fact, the said Atlantic Coast Line Railroad Company, to-wit: prior to January 31st, 1929, asserted and claimed that "Said Order" was applicable to the transportation of Short Logs and was applicable to the transportation of logs, except walnut, cherry and cedar moving intrastate over all its lines in all directions from all points throughout Florida. That said Railroad Company declared its intention to demand, charge and collect, on and after February 8th, 1929, from all shippers of Short Logs and all shippers of logs, except walnut, cedar and cherry, between all points on its lines in Florida, the same scale of rates prescribed by the order of said Interstate Commerce Commission for transportation of logs from points in Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations in Georgia.

VIII

That under and pursuant to the Laws of Florida it is the duty of the Railroad Commissioners in the name of the State of Florida, and in the Courts of the State of Florida, to enforce by injunction or otherwise, all intrastate rates [fol. 82] established under and pursuant to the Laws of Florida except to the extent that such rates should have been superseded by the paramount Federal power. That pursuant to such duty, and on, to-wit: January 31, 1929, there was filed in the Circuit Court in and for Duval County, Florida, in the name of the State of Florida, as complainant, acting by and thru the said Railroad Commissioners and the said Attorney-General, a certain Bill of Complaint against said Railroad Company as Defendant, and wherein the relief sought was injunctions, temporary and permanent, enjoining and restraining said Railroad Company from demanding, charging or collecting on or after February 8, 1929, any rates or charges higher than the existing Intrastate Rates for the transportation of, logs, except cedar, in carload quantities, except from points of origin within the area to which this Court by its said decision, opinion and decree held "Said Order" to be applicable; and to enjoin and restrain the said Railroad Company from demanding, charging or collecting on or after February 7, 1929, in intrastate traffic, the said scale of rates prescribed by "said Order" except for the transportation, northbound, from points of origin within the area to which this court held "Said Order" to be applicable; and likewise to enjoin and restrain the said Railroad Company from demanding, charging and collecting on or after February 8th, 1929, any rates or charges higher than the existing intrastate rates on Short Lots moving intrastate in Florida between all points on the lines of said Railroad Company in Florida.

IX

That thereafter, on February 4th, 1929, the said Railroad Company filed its Petition and Bond for the removal of the said last described suit from the said State Court to the United States District Court for the Southern Dis-

trict of Florida but said State Court denied said Petition for Removal and retained jurisdiction of said cause and thereupon the said State Court issued said injunctions substantially as was prayed.

A photostatic transcript of record in said State Court Suit is herewith tendered as Exhibit B, and made a part hereof as if specifically set forth herein.

[fol. 83] X

That thereafter to-wit: on February 5, 1929, the said Interstate Commerce Commission by its order dated that day did amend "Said Order" of August 2, 1928, so that said last described order, as amended, should expressly declare that Short Logs were not within the purview thereof.

A true copy of said order is herewith tendered as Exhibit C, and made a part hereof as if specifically set forth herein.

XI

That thereafter, on February 7, 1929, the said Atlantic Coast Line Railroad Company, as Complainant, did file in the United States District Court for the Southern District of Florida, its ancillary bill of complaint wherein the said A. S. Wells, E. S. Matthews and Mamie G. Eaton, Members of the Railroad Commission of Florida, were named as defendants and wherein and whereby the said Railroad Company sought to effect a removal of said State Court suit to said United States District Court and also to enjoin the said A. S. Wells, E. S. Matthews and Mamie G. Eaton from proceeding further in the prosecution of said State Court suit; and also sought a decree of said United States District Court declaring that said injunction issued by said State Court to be null and void. And on said February 7, 1929, the said Railroad Company did present said ancillary bill to the Hon. W. B. Sheppard, Judge of the District Court of the United States for the Northern District of Florida, theretofore lawfully assigned to and sitting as Judge for the Southern District of Florida, and did move said court to issue the temporary injunctions therein prayed.

XII

That on, to-wit: February 7, 1929, the said Railroad Company did likewise file in the United States District Court for

the Northern District of Florida its original bill of complaint wherein and whereby the said Railroad Company (notwithstanding the decision, opinion and decree of this Court) did assert that the order of said Interstate Commerce Commission, dated August 2nd, 1928, require it to demand, charge and collect for the transportation of logs, except walnut, cherry and cedar, intrastate in Florida, from all points of origin on its lines in Florida, moving in all directions, the same scale of rates as were prescribed by said order of application on interstate movements on logs, ex-
[fol. 84] cept walnut, cherry and cedar, northbound, from all points of origin north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations in Georgia. And said Railroad Company in and by said Bill, among other things, prayed that the said defendants therein named be temporarily and permanently enjoined from interfering with the demanding, charging and collecting by it of the said last described rate between any point of origin on its lines in Florida and any destination on its line in Florida, in any direction.

That on the same day, to-wit, February 7, 1929, the said Railroad Company did present the last mentioned bill to the Hon. W. B. Sheppard, as Judge of said Northern District of Florida, and at the same time did move said Court to issue the temporary injunctions therein prayed.

XIV

That the said ancillary bill referred to in paragraph XI. above, and the said bill referred to in paragraph XII. above were presented to the said Judge at one and the same time; that after the filing and presentation thereof and before any orders had been made by said Court thereon the said Interstate Commerce Commission, without notice to your Orator, and without any investigation or proceeding whatsoever, did on to-wit: February 7, 1929, make and direct to be published at 10 o'clock A. M. on February 8, 1929, a certain order, wherein and whereby said Interstate Commerce Commission did so amend its said order of August 2, 1928, so that the same, as amended, required said Railroad Company to apply the scale of rates for the transportation of logs, except walnut, cherry and cedar logs and except short logs, moving in carload quantities, between all points of

origin in the State of Florida on the lines of said Railroad Company in all directions to all destinations on the lines of said Railroad Company in Florida, the same as said scale of rates prescribed by "Said Order," of August 2, 1928, for application to the transportation interstate of such logs in such quantities from points north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, north bound to destinations in Georgia.

A true copy of said Amendatory Order of February 7, 1929, is herewith tendered as Exhibit D, and made a part hereof as if specifically set forth herein.

[fol. 85] That, afterwards, to-wit: on February 8, 1929, the said ancillary bill so filed by said Railroad Company in the said United States District Court for the Southern District of Florida and the said Bill so filed by said Railroad Company in the United States District Court for the Northern District of Florida were amended by said Railroad Company and anssers and motions to dismiss were duly filed by your Petitioner to the said bill and ancillary bill as amended as aforesaid; and thereupon said United States District Courts respectively, did make and enter orders denying the said injunctions prayed by said bills, respectively, and dismissed both of said bills.

That complete copies of the record in each of said cases set forth in paragraphs numbered XI and XII are herewith tendered as Exhibit E, and F, and are made a part thereof as if specifically set forth herein.

That on February 13th, 1929, the said United States District Court for the Southern District of Florida, upon the Petition of said Railroad Company, did allow an appeal from the decree of said last described Court to the United States Circuit Court of Appeals for the 5th Circuit and the said appeal is now pending.

XV

That the purpose, intent and effect of said order of the Interstate Commerce Commission of August 2, 1928, as amended by said order of February 7, 1929, is to refute and deny the construction and limitation placed upon the said order of August 2, 1928, by this Court prior to the said amendment of February 7, 1929; and said order, as

amended as aforesaid, constitutes an attempt on the part of said Interstate Commerce Commission to fix and establish intrastate rates from all points of origin on the lines of said Atlantic Coast Line Railroad Company in Florida to all destinations on the lines of said Railroad Company in Florida in all directions.

XVI

That your Orator brings this Supplemental Bill to set forth the new facts, matters and things that have occurred and taken place since this Court's decision, opinion and decree of January 17, 1929, and to enjoin, set aside, annul and suspend report and "Said Order" of the Interstate Commerce Commission of August 2nd, 1928, as amended by the [fol. 86] order of February 7, 1929, insofar as such report and order as amended required or attempts to require the Atlantic Coast Line Railroad Company to establish, put in force and maintain rates for the transportation of logs, except walnut, cherry and cedar, in car loads, minimum weight, 40,000 in intrastate traffic "within and throughout the entire State of Florida, without exception," which shall be the same as those prescribed by said Interstate Commerce Commission as reasonable for transportation over said Atlantic Coast Line Railroad Company's lines, from points of origin in the State of Florida North of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on the said Company's lines in the State of Georgia.

That report and "Said Order" as amended as aforesaid with respect to the Florida Intrastate Rates on logs was and is arbitrary and unreasonable beyond the power of the Interstate Commerce Commission and wholly invalid and unlawful for the reasons following: among others, to-wit:

(a) Such report and "Said Order as amended as aforesaid are unlawful because under the facts of record in such proceedings before the Interstate Commerce Commission there was no constitutional right or warrant for the exercise or attempt to exercise any federal power in derogation of or superior to the power and authority of this State of Florida in respect to the regulation of intrastate commerce sought to be affected by such order.

(b) Such report and "Said Order as amended as aforesaid are unlawful because there was no substantial evidence before the Interstate Commerce Commission, nor did that tribunal find that there was any substantial evidence before it showing or tending to show that there was or could be any undue or unjust preference or advantage of Florida shippers or communities, or any undue or unjust prejudice or disadvantage of Georgia shippers in violation of Section 3 and 13 of the interstate commerce act.

(c) Such report and "Said Order" as amended as aforesaid are unlawful because the Interstate Commerce Commission has thereby sought to regulate internal concerns of the State of Florida as if unjust discrimination against interstate commerce in violation of Section 13 existed when there was not submitted to the Interstate Commerce Commission by any party to the proceedings before it any case or controversy of such character, and there was no other [fol. 87] pending proceeding or order of investigation of such Commission involving any such subject matter.

(d) Such report and "Said Order" as amended as aforesaid are unlawful because there were no facts of record in such proceeding before the Interstate Commerce Commission showing, or tending to show, nor did the Interstate Commerce Commission find any facts sufficient to constitute unjust discrimination against interstate commerce in violation of the provisions of Section 13 of the Interstate commerce act.

(e) Such report and "Said Order" as amended as aforesaid are unlawful because thereby the Interstate Commerce Commission has sought to embrace within the scope thereof all rates of the Atlantic Coast Line Railroad Company on logs between any stations on its line wholly within the State of Florida for any length of haul, and in any portions of such State, although there was no case or controversy submitted to that tribunal or pending before it involving in any way freight rates of the Atlantic Coast Line Railroad on logs within Florida except for hauls of 170 miles and less over such railroad and except for hauls of such length over such railroad wholly within the so-called northern portion of the State. Furthermore, there was no substantial evidence in such proceedings before the Interstate Commerce

Commission showing or tending to show that all freight rates of the Atlantic Coast Line Railroad Company on logs over any portion of its line, wholly within the State of Florida, violated or would violate either Section 3 or Section 13 of the Interstate Commerce Act. Therefore, such order unlawfully embraces with in its territorial scope freight rates on logs between points within the State of Florida, as to which no case or controversy was submitted to the Interstate Commerce Commission and as to which no substantial evidence was directed.

(f) The said action of said Interstate Commerce Commission Constitutes an unlawful invasion of the sovereign rights of the State of Florida reserved to it by the Constitution of the United States and of the citizens of said State of Florida, and is without any warrant or authority of or under the Constitution of the United States; and further, that the same Commission was and is without jurisdiction to enter its said order.

[fol. 88] (g) The said action of said Interstate Commerce Commission constitutes an unlawful exercise of power by the Interstate Commerce Commission and is without warrant or authority of or under the Constitution of the United States.

Forasmuch, therefore, as your Orator is without remedy save in the Court of Equity and to the end that the Defendants, the United States of America and the Interstate Commerce Commission, and the Intervenor, Georgia Public Service Commission, and each of them, may, if they can show why your Orator should not have the relief herein prayed, and may full, true, direct and perfect answers make to this Supplemental Bill, to the best and utmost of their respective knowledge, remembrance, information and belief to each and every of the matters and things herein set forth, as ff specifically interrogated,

Your Orator would therefore pray:

First. That process may issue against the Defendants United States of America and the Interstate Commerce Commission and the Intervenor, Georgia Public Service Commission with service thereof and of this Supplemental

Bill in the manner prescribed by statute in such cases made and provided.

Second. That this Honorable Court will grant your Orator an interlocutory order enjoining, setting aside, annulling and suspending the enforcement of such part or parts of the order of the Interstate Commerce Commission of August 2nd, 1928, as amended February 7, 1929, that required or attempted to require the Atlantic Coast Line Railroad a common carrier, subject to the jurisdiction of the administration regulatory commission of the State of Florida to establish, put in force and maintain rates for the transportation of logs, except walnut, cherry and cedar, in car loads, minimum weight, 40,000 in intrastate traffic within and throughout the entire State of Florida, without exception, which are the same as those prescribed by said Interstate Commerce Commission in said Order of August 2nd, 1928, as reasonable for transportation in Interstate Commerce, north bound from points of origin on the Atlantic Coast Line in Florida, north of and including [fol. 89] Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations on said company's lines in the State of Georgia, without first having the authority of the State of Florida so to do; and that such interlocutory order continue in force and effect until further order of this Court.

Third. That upon final hearing there will be made and entered a decree and order of this Court enjoining, setting aside, annulling and suspending that portion of the order the Interstate Commerce Commission entered by it on August 2nd, 1928, in Docket #18364 entitled Georgia Public Service Commission versus the Atlantic Coast Line Railroad (146 I. C. C. 717) as amended by said Interstate Commerce Commission, by its order of February 7, 1929, and by which said Interstate Commerce Commission required the Atlantic Coast Line Railroad Company to establish, put in force and maintain rates for the transportation of logs, except walnut, cherry and cedar, in car loads, minimum weight, 40,000 in intrastate traffic within and throughout the entire State of Florida, without exception, which shall be the same as those prescribed in said order of August 2, 1928, by said Interstate Commerce Commission in a preceding paragraph thereof, as reasonable for trans-

portation in Interstate Commerce north bound from certain designated points in the State of Florida to destinations in the State of Georgia.

Fourth: That your Orator may have such, every and further relief in the premises as to this Honorable Court shall seem meet and proper, and as equity and good conscious may require.

And your Orator would therefore pray, etc.

The State of Florida, by Doyle E. Carlton, Governor.

[fol. 90] A. S. Wells, E. S. Matthews, Mamie G. Eaton, as and consisting the Railroad Commissions of the State of Florida. For the State of Florida: Fred H. Davis, Attorney-General of Florida; Theo. T. Turnbull, Special Counsel for Florida Railroad Commission, Solicitors for Complainant.

[fol. 91] *Duly sworn to by A. S. Wells. Jurat omitted in printing.*

[fol. 92] EXHIBIT A TO SUPPLEMENTAL BILL

BEFORE THE RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA

Order No. 979

Changes in Intrastate Rates on Logs Except Walnut, Cherry, and Cedar, from and to Certain Points in the Northern Part of Florida Pursuant to decision of Federal Court.

Issued January 30, 1929. Effective January 30, 1929

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1. This order is made in view of impending changes in certain intrastate rates on logs in carloads from and to certain points on Atlantic Coast Line Railroad within the State of Florida, which changes in rates have been filed

with the Interstate Commerce Commission in the following schedules to become effective on February 8, 1929:

Agent Glenn's Southern Lumber Tariff, I. C. C. A-659, Supplements 10, 12, 13, 15 and 16;
Agent Glenn's Port Lumber Tariff, I. C. C. A-647, Supplements 8, 9, 11, 13 and 14;
Atlantic Coast Line Railroad Company's Florida local tariff No. 20, I. C. C. B-2466, Supplements 4, 5, 6 and 7,

including specific items which purport to be issued in compliance with the orders of the Interstate Commerce Commission in its Docket Number 18364. The purpose of this order is to amend the Florida intrastate rates to conform to the orders of the Interstate Commerce Commission in Docket 18364 as construed and defined by the District Court of the United States for the Northern District of Georgia, Atlanta Division, in equity, in its opinion dated January 17, 1929.

2. Whereas the said schedules would have the effect of increasing the rates on logs of various kinds and other various description between points on the Atlantic Coast Line [fol. 93] Railroad thruout the entire state of Florida without submitting the proposed increased rates to the Railroad Commissioners and receiving their approval as provided in General Rule No. 7 in Section 1 of the Rules and Regulations of the Railroad Commissioners of the State of Florida and without a determination of such submission or application by the Railroad Commissioners as provided in Section 6730 of the Compiled General Statutes and Section 4644 of the Revised General Statutes of 1920, which said submission, application, approval and determination must be procured before any increases or changes can lawfully be made in any existing intrastate rates or charges for transportation subject to the jurisdiction of the railroad commissioners of Florida.

3. Whereas the said tariffs and schedules insofar as they name increased rates on logs, or cancel existing rates on logs of various kinds and descriptions including veneer blocks or bolts namely logs less than six feet in length, between points thruout the state of Florida on the lines of the Atlantic Coast Line Railroad Company purport to be

issued in compliance with orders of the Interstate Commerce Commission in its Docket No. 18364, Georgia P. S. Commission v. A. C. L. R. R. Co. 146 I. C. C. 717;

4. Whereas the District Court of the United States for the Northern District of Georgia, Atlanta Division, in equity, in its opinion dated January 17, 1929, has construed and defined, for the purpose of rendering valid, the said order of the Interstate Commerce Commission in the said Docket Number 18364 as being limited in its territorial scope insofar as it prescribes intrastate rates on logs to those rates which apply on logs except walnut, cherry and cedar from points on Atlantic Coast Line Railroad's lines in Florida north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, in one direction north bound for distances not in excess of 170 miles; and whereas [fol. 94] the said schedules above named in Paragraph 1 hereof are not limited or restricted in accordance with the said special Federal Court's construction and definition of the said order of the Interstate Commerce Commission in its Docket No. 18364; and

5. Whereas it is deemed necessary in the public interests that the Railroad Commissioners of the State of Florida defined the extent, if any, to which the intrastate rates on logs in Florida will or may be changed on February 8, 1929, by virtue of the filing and publishing of the tariffs and schedules named in Paragraph 1 hereof with the Interstate Commerce Commission;

6. It is hereby ordered that the present intrastate rates on logs of all kinds and descriptions including veneer blocks, bolts, or short logs which are in effect and lawfully published as required under the laws of the State of Florida and the regulations of the Railroad Commissioners of the State of Florida on the date of this Order shall remain in full force and effect on and after February 8, 1929, until further Order of the said Railroad Commissioners of the State of Florida, notwithstanding the changes proposed to become effective on February 8, 1929, in the schedules and tariffs named in Paragrph 1 hereof; except that, so long as the said decision of the said Federal Court shall or may remain in force and unreversed, the said schedules and tariffs will, under authority of the Interstate Commerce

Commission, have the effect of changing and increasing only and solely the intrastate rates under the following tariff description "logs, except cedar, cherry and walnut logs, carload minimum weight 40,000 pounds", (this description does not include bolts, i. e. logs not over six feet in length) for distances not exceeding 170 miles only in one direction namely north bound to destinations in Florida on [fol. 95] the direct short line routes of the Atlantic Coast Line Railroad from the list of stations hereinafter named on the lines extending from High Springs, Florida, thru Baker's Mill, Florida, to and beyond DuPont, Georgia, and on the line extending northward from Gainesville, Florida, thru Burnett's Lake and thru Jacksonville to and beyond Folkston, Georgia, viz:

Points of Origin

Boulogne, Andrews, Hillard, Dual, Callahan, Ratliff, Cary, Dinsmore, Pickett, Jacksonville;

Baker's Mill, Jasper, Marion, Suwanee, Rixford, Live Oak, Padlock, Pine Mount, McAlpin, O'Brien Branford, Harvard & Groover, Thompson's Spur, Hildreths, Fort White, High Springs;

Herlong, Shelton, Columbia, Lake City,

East Alachua, Burnett's Lake,

Hague, Gracys, Paradise, T. & J. Crossing, Gainesville,

Florida Transfer, Valdosta Crossing, Cambon, Deeville, Baldwin, Mattox, McPherson, La Buena, Stockert, Manning, Sapp, Harrah, Ellarbee, Raiford, Johnstown, Lake Butler, Townsend's Still, Putnam, Dukes, Munich, Worthington Springs, Santa Fe, Haynesworth, Burnett's Lake and Alachua.

(NOTE.—These stations are named in the Glenn Tariff, I. C. C. A-659, page 414, note A.)

The jurisdiction of the Interstate Commerce Commission over the rates named in the exception above described has been upheld under the decision of the Federal Court, thus superseding the laws of the State of Florida and the regulations of the Railroad Commissioners of the State of Florida.

7. Ordered further that counsel for the Railroad Commissioners for the State of Florida be and is hereby au-

thorized and directed to take such steps as may be or may become necessary to preserve the existing intrastate rates on logs of all kinds and descriptions and the rates on veneer [fol. 96] blocks, bolts or short logs, which are lawfully in effect between all points in the State of Florida, so that the same shall remain in full force and effect on and after February 8, 1929, notwithstanding the filing of the tariffs and schedules named in Paragraph 1 hereof with the exception of the intrastate rates on logs except cherry, walnut and cedar from the points specified in Paragraph 6 hereof as prescribed by the Interstate Commerce Commission and upheld by the decision of the Federal Court as described in Paragraph 6.

8. Done and ordered by the Railroad Commissioners of the State of Florida in session at their office in the City of Tallahassee, Florida, this 30th day of January, 1929.

Railroad Commissioners of the State of Florida.
(Signed) A. S. Wells, Chairman. (Seal.)

[fol. 97] Exhibit "B" to Supplemental Bill

In the Circuit Court in and for Duval County, Florida

In Chancery

State of Florida, Complainant,

vs.

Atlantic Coast Line Railroad Company, a Corporation, Defendant

Petition for Removal of the Above-stated Cause to the United States District Court for the Southern District of Florida

To the Honorable the Circuit Court in and for Duval County, Florida:

Your petitioner, Atlantic Coast Line Railroad Company, respectfully shows that it is the defendant in the above entitled suit and that your petitioner is a corporation under the laws of the State of Virginia and is therefore a resident

and citizen of the State of Virginia; that the above entitled cause is a suit in equity and that the amount involved exceeds exclusive of interest and costs the sum or value of Three Thousand ($3,000) Dollars.

Petitioner's petition alleges in substance as follows:

That long prior to May 3, 1926 there was in effect from all stations on petitioner's lines of railroad in Florida to all stations on its lines in Florida a certain special distance scale of commodity rates for the transportation of logs. Said scale was duly filed in pursuance of the laws of Florida in the year 1914.

[fol. 98] That on May 3, 1926 there was established a certain other scale of rates on logs of ash, gum, hickory, oak, pine and cypress not exceeding six feet in length; that this scale was duly filed and established pursuant to law and is in force and effect throughout the State of Florida.

That on May 3, 1926, the State of Georgia, acting through the Georgia Public Service Commission, filed with the Interstate Commerce Commission of the United States a certain complaint against the Atlantic Coast Line Railroad Company, in which complaint it was alleged that the existing rates on logs in carloads to named points in Florida on certain of this petitioner's lines then existing to certain destinations on this petitioner's lines in Georgia, were unjust and unreasonable, and that as compared with the Florida intrastate scale were unjustly discriminatory and unduly prejudicial, and that the Florida intrastate scale was then and there unduly preferential of intrastate shippers in Florida, unduly prejudicial to interstate shippers from Florida to Georgia and unduly discriminatory against interstate commerce, and that in said complaint the Georgia Public Service Commission sought the establishment of reasonable non-prejudicial and non-discriminatory rates for future use, and that after hearing, certain rates were established by the Interstate Commerce Commission to apply to the transportation of logs except walnut, cherry and cedar in carloads from points on the lines of your petitioner in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its line in the State of Georgia, and that the Inter-[fol. 99] state Commerce Commission notified your petitioner to cease and desist from practicing certain alleged

undue prejudices and unjust discriminations found in said decision to exist in the relation of interstate and intrastate rates, and to put in and maintain rates for the transportation of logs except walnut, cherry and cedar in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which should be the same as those prescribed by said order as reasonable for transportation in interstate commerce.

That this petitioner, purporting to comply with the decision and order of the said Commission, filed with the said Commission a certain supplement to its tariff, wherein this petitioner purported to cancel the Florida intrastate scale on all of its lines in the State of Florida, and that this petitioner did, purporting to comply with the said decision and order of the Interstate Commerce Commission, likewise file with the said Commission its other supplement to Florida Local Tariff No. 20 I. C. C. B-2466, wherein it purported to make effective as of October 10, 1928 between all points on all of its lines in intrastate traffic within the State of Florida the same rates which were prescribed by the said order of the said Interstate Commerce Commission for application from points on the lines of the defendant in the State of Florida North of and including Jacksonville, Burnett's Lake, Gainesville and High Springs to destinations on its lines in the State of Georgia; that the effective dates of the order and of the alleged cancellation of the Florida intrastate scale and the alleged application of the new rates were postponed to February 8, 1928 and that [fol. 100] thereafter a bill was filed in the United States District Court for the Northern District of Georgia, Atlanta Division, by the State of Florida against the United States of America and the Interstate Commerce Commission, wherein the State of Florida sought to enjoin and set aside so much of the said order of the Interstate Commerce Commission as required petitioner to establish and put in force rates on logs in intrastate commerce in the State of Florida, and that there was a trial thereon before three judges constituting said court, and the court rendered its decree on January 17, 1929 and that it rendered an opinion and by its opinion the Court construed and defined the order of the Interstate Commission so sought to be enjoined and

set aside, as being limited in its scope in so far as it prescribed intrastate rates to rates on logs except walnut, cherry and cedar, from points on petitioner's lines in Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs in one direction north bound for distances not exceeding one hundred and seventy (170) miles, and found that said order in no way affected any intrastate rates upon logs from any other points of origin moving in any other direction.

That the Court, by its opinion having so limited the scope, operation and effect of the order of the Interstate Commerce Commission, entered a decree dismissing the bill of the State of Florida.

The Veneer Block Scale (short log rate) is published by this petitioner in its Florida Intrastate Tariffs No. 20, I. C. C. B-2466, and that in supplements 4, 5, 6 and 7 filed with the Interstate Commerce Commission prior to October [fol. 101] 5, 1928 to become effective on October 10, 1928, and subsequently postponed to become effective on February 8, 1929, this petitioner attempts to cancel out the Veneer Block Scale and substitute therefor another and higher scale; and that the said Veneer Block Scale was not in issue before the Interstate Commerce Commission.

The petition sets out certain rules of the Florida Railroad Commission, No. 7 and No. 16, which prevent increasing of railroad rates except upon approval of the Railroad Commissioners of Florida, and which undertake to prevent the discontinuance of rates, facilities and services except upon like consent, and that this petitioner has not filed with the Railroad Commissioners any proposed change, increase or reduction of the said Florida intrastate scale, or of the said Veneer Block scale.

The complainant then alleges in substance that no rate from any point of origin or station on the line of this petitioner was affected by the order of the Interstate Commerce Commission as construed and limited by the United States District Court, except rates on logs other than logs not over six feet in length and other than cedar logs, from points of origin north of and including High Springs, Florida, situated upon the lines of this petitioner and extending northwardly from High Springs, Florida, through Baker's Mill, Florida, to and beyond Du Pont, Georgia, and

except from points of origin north of and including Gainesville, Florida, situate upon the lines of the said defendant which extends northwardly from Gainesville, Florida [fol. 102] through Burnett's Lake and through Jacksonville, Florida to and beyond Folkston, Georgia.

That this petitioner has failed and refused to modify its tariffs filed with the Interstate Commerce Commission in compliance with the decision of the United States District Court.

Attached to this petition is an order with an exhibit, purporting to be order No. 979 of the Railroad Commissioners of the State of Florida, which order alleges in substance that in view of impending changes in intrastate rates on logs in carloads from and to certain points on the Atlantic Coast Line Railroad in Florida, which changes in rates have been filed with the Interstate Commerce Commission to become effective on February 8, 1929, as shown by certain tariffs therein described—that the purpose of the order of the Florida Commission is to amend the Florida intrastate rates to conform to the orders of the Interstate Commerce Commission hereinbefore referred to.

After making recitations, the Florida Commission purports to order that the present intrastate rates on logs of all kinds and description including veneer blocks, bolts or short logs which are in effect and lawfully published under the laws of the State of Florida and the regulations of the Railroad Commissioners of Florida, on the date of this order shall remain in full force and effect on and after February 8, 1929, until further order of the said Railroad Commissioners of the State of Florida, notwithstanding the changes proposed to become effective on February 8, 1929 in the schedules and tariffs named in paragraph 1 of the [fol. 103] said order, which said schedules and tariffs are those which have been filed with the Interstate Commerce Commission. The order then makes certain exceptions purporting to delimit and define the territory in which the Interstate Commission's order is effective in the State of Florida.

This petitioner seeks to have the aforementioned suit removed to the United States District Court for the Southern District of Florida for that:

(1) It is a suit of a civil nature in equity, wherein the matter in controversy exceeds exclusive of interest and costs the sum or value of Three Thousand ($3,000) Dollars and arises under the Constitution or laws of the United States;
and for that:

(2) It is a suit in equity brought to enjoin, set aside, annul or suspend in whole or in part an order of the Interstate Commerce Commission.

This suit thus sought to be removed is one in which the United States District Court has original jurisdiction. The questions which arise under the Constitution or laws of the United States appear from the facts pleaded in the said petition and hereinbefore referred to, in this, that:

(a) The petition shows that it is an effort to limit the operation of an order of the Interstate Commerce Commission therein referred to, both in its territorial scope and in the subject matter of its application, and thereby in effect to set aside, annul or suspend in part the order of the Interstate Commerce Commission there referred to;

[fol. 104] (b) The effect of the suit is in fact to completely annul the order of the said Commission, for if limited and construed as contended for, there would be no subject matter left for operation; and to annul in whole or in part tariff and rates and rate schedules lawfully filed by this petitioner with the Interstate Commerce Commission.

(c) The suit undertakes to construe and apply the order of the Interstate Commerce Commission and, as thus construed by the Florida Railroad Commissioners, to rely thereon;

(d) The petition undertakes to construe and apply and limit the order of the Interstate Commerce Commission as to territory and as to commodities; and as thus construed by the Florida Railroad Commissioners to rely thereon;

(e) The suit undertakes to construe and to apply an opinion of the United States District Court for the Northern District of Georgia, which is referred to therein and to rely thereon;

(f) That a construction and limitation and annulment of the order of Interstate Commerce Commission is sought without having applied to a Commission, and the construction of the opinion of the United States District Court for the Northern District of Georgia is sought without having applied to said Court.

(g) That the suit is an effort to deprive this petitioner of rights conferred upon it by order of the Interstate Commerce Commission, acting under and in pursuance of the terms of an Act of Congress known as the Interstate Commerce Act, approved February 4, 1887 and its various amendments, and especially including Section 13, Subsection 4 thereof, and to deprive your petitioner of rights conferred by said order and by the Interstate Commerce Clause of the United States Constitution and laws enacted in pursuance thereof. The purpose of the suit is to rely upon and use an opinion of the United States District Court for the Northern District of Georgia, which opinion is not a decree, but which Court rendered a decree denying to the Railroad Commission of Florida the relief which it prayed [fol. 105] in its bill in which said decree was rendered; and to do this without applying to and outside of said cause and outside of the jurisdiction which rendered the same, to-wit., the jurisdiction of the United States.

2

For that the controversy is between citizens of different states. The State of Florida has no real interest in the controversy; it will receive no financial benefit therefrom; the results of the litigation will not inure to the benefit of the State in any degree; it is a suit concerning rates on the carrying of commodities by a railroad. The controversy is between A. S. Wells, E. S. Matthews and Mamie C. Eaton, who are members of the Railroad Commission of the State of Florida, and who are residents and citizens of the State of Florida, on the one hand, and the Atlantic Coast Line Railroad Company on the other; the Atlantic Coast Line Railroad Company being at the time of the filing of said suit and at all times since a Corporation under the laws of Virginia.

Your petitioner shows that at the time the said suit was filed, the citizenship of the parties was as herein stated, and that status of citizenship has remained.

Your petitioner offers herewith a bond with good and sufficient security, conditioned for your petitioner's entering a certified copy of the record in the Circuit Court of the United States for the Southern District of Florida within the time required by law, and for paying all costs that may be awarded by the said United States District Court, if said Court shall hold that this suit is wrongfully or improperly removed thereto.

This petition is filed before the petitioner is required by the laws of the State of Florida or the rules of the Circuit Court for Duval County, Florida to answer or plead to the complaint of the plaintiff. Written notice of the petition [fol. 106] for removal has been given to the adverse parties prior to filing this petition.

Your petitioner, therefore, prays this honorable Court to proceed no further in said suit except to make an order of removal thereof, as required by law, and to accept the said surety and bond and to cause the record in said suit to be removed to the United States District Court for the Southern District of Florida, according to the Statutes in such cases made and provided, and your petitioner will ever pray.

Atlantic Coast Line Railroad Company, by R. C. Alston, by Daggett & Daggett, its Solicitors.

[fol. 107] STATE OF FLORIDA,
County of Duval:

J. W. Perrin, being duly sworn, on oath deposeth and saith that he is Asst. Freight Traffic Manager of the Atlantic Coast Line Railroad Company, defendant in the aforesaid bill of complaint mentioned in the foregoing petition; that he has read the foregoing petition, knows the contents thereof and the matters and things therein mentioned are true, as he verily believes.

J. W. Perrin.

Sworn to and subscribed before me, this the 2 day of February, 1929. A. B. Weil. (Seal.)

[fol. 108] Copy

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR DUVAL COUNTY

In Chancery

STATE OF FLORIDA, Complainant,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Defendant

Order

This cause coming on to be heard upon the petition of defendant for removal to the Federal Court, and the same having been argued and submitted, it is, upon consideration, ordered, adjudged and decreed that said petition for removal be, and the same is hereby denied.

Done and ordered at Chambers, Jacksonville, Florida, this 4th day of February, A. D. 1929.

(Signed) De Witt T. Gray, Judge.

[fol. 109] IN THE CIRCUIT COURT IN AND FOR DUVAL COUNTY, FLORIDA

In Chancery

THE STATE OF FLORIDA, Complainant,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Defendant

This cause came on to be heard upon application for temporary injunction after due notice and upon the affidavits in support thereof and upon consideration the court being advised in the premises, it is, thereupon, ordered, adjudged and decreed:

1. That the defendant Atlantic Coast Line Railroad Company, its agents, servants, employees and attorneys be and the same are hereby each jointly and severally restrained and enjoined forthwith from demanding, charging, or col-

lecting on or after February 8, 1929, any rates or charges higher than those in the scale of rates hereinafter set forth in this paragraph numbered 1 which are specified for the transportation of logs (other than cedar logs, and other than logs not over 6 feet in length) in carload quantities moving intrastate in Florida for distances up to but not exceeding 170 miles from any point of origin, on its lines in Florida to any destination on its lines in Florida except for transportation northbound from points of origin north of and including Burnett's Lake, Florida, situated upon the line of said defendant, which extends northwardly from said Burnett's Lake, Florida, through High Springs, Florida, through Baker's Mill, Florida to and beyond Dupont, Georgia, and except for transportation northbound from points of origin north of and including Gainesville, Florida, upon the line of the defendant which extends northwardly from Gainesville, Florida, through Burnett's Lake, Florida, and through Jacksonville, Florida, to and beyond Folkston, Georgia, said scale of rates is as follows: [fol. 110] Logs, carload, except cedar logs, per car 50,000 pounds, excess in proportion, cars to be loaded and unloaded by owner and not to be unloaded on the railroad right of way:

From A. C. L. R. R. Stations in Florida to A. C. L. R. R. Stations in Florida

For distances of

40 miles and under	955 cents
60 miles and over 40 miles	1050 cents
90 miles and over 60 miles	1150 cents
100 miles and over 90 miles	1300 cents
110 miles and over 100 miles	1400 cents
130 miles and over 110 miles	1600 cents
160 miles and over 130 miles	1700 cents
170 miles and over 160 miles	1850 cents

3. That the defendant Atlantic Coast Line Railroad Company, its agents, servants, employees and attorneys be and the same are hereby each jointly and severally restrained and enjoined forthwith from demanding, charging, or collecting on, or after February 8th, 1929, any rates or charges higher than those specified in the scale of rates hereinafter

specified in this paragraph numbered 2 for the transportation of hickory, ash, oak, pine, gum and cypress logs not over 6 feet in length in carload quantities moving intrastate in Florida on the line of said defendant in Florida, said scale of rates in this paragraph numbered 2 is as follows: Logs, viz., ash, gum, hickory, oak, pine and cypress, not over 6 feet in length, per car forty thousand pounds excess in proportion:

Distances	Rate
5 miles and under	855 cents
10 miles and over 5	855 cents
20 miles and over 10	950 cents
30 miles and over 20	1100 cents
40 miles and over 30	1150 cents
50 miles and over 40	1300 cents
60 miles and over 50	1400 cents
70 miles and over 60	1500 cents
80 miles and over 70	1600 cents
90 miles and over 80	1700 cents
100 miles and over 90	1800 cents
110 miles and over 100	1850 cents
120 miles and over 110	2000 cents
125 miles and over 120	2050 cents
140 miles and over 135	2150 cents
[fol. 111]	
150 miles and over 140	2200 cents
160 miles and over 150	2300 cents
170 miles and over 150	2500 cents
200 miles and over 160	2500 cents
220 miles and over 200	2600 cents
240 miles and over 220	2700 cents
260 miles and over 240	2750 cents
280 miles and over 260	2850 cents
290 miles and over 280	2900 cents
320 miles and over 290	2950 cents
330 miles and over 320	3050 cents
340 miles and over 330	3100 cents
360 miles and over 340	3150 cents
370 miles and over 360	3200 cents
380 miles and over 370	3300 cents
400 miles and over 380	3350 cents

3. That the said injunctions and restraining orders hereinabove set forth each and every shall be and remain in force and effect pending this suit and until the further order of this court.

Done and ordered at Jacksonville, in Duval County, Florida, in Chambers, this February 4th, A. D.1929.

(Signed) De Witt T. Gray, Circuit Judge.

[fol. 112] Exhibit "C" to Supplemental Bill

At a Session of the Interstate Commerce Commission, Division 4, held at its office in Washington, D. C., on the 5th day of February, A. D., 1929.

No. 18364

Georgia Public Service Commission

v.

Atlantic Coast Line Railroad Company

Upon further consideration of the record in the above-entitled proceeding, and for good cause shown:

It is ordered, That the order heretofore entered in this proceeding on August 2, 1928, be, and it is hereby, amended as follows: By inserting after "logs, except walnut, cherry, and cedar" in the second, third, and fourth paragraphs of said order the following: "and except ash, gum, hickory, oak, pine, and cypress logs not over six feet in length."

It is further ordered, That in all other respects said order shall remain in full force and effect.

By the commission, division 4.

George B. McGinty, Secretary. (Seal.)

[fol. 113] Exhibit "D" to Supplement Bill

Order

At a Session of the Interstate Commerce Commission, division 4, held at its office, in Washington, D. C., on the 7th day of February, A. D., 1929.

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Upon further consideration of our order heretofore entered in this proceeding on August 2, 1928, as amended by orders entered August 27th, October 19th, and November 30th, 1928, and February 5, 1929, and because of doubt that has arisen as to the territorial limits intended to be covered by that portion of said order of August 2, 1928, as amended, prescribing intrastate rates within the State of Florida:

It is ordered, That the said order of August 2, 1928, as amended, be, and it is hereby, changed in language for the purpose of clarification as follows: In the fourth paragraph of said order of August 2, 1928, substitute for "within the State of Florida" the following: "Within and throughout the entire State of Florida, without exception."

By the Commission, Division 4.

George B. McGinty, Secretary. (Seal.)

[fol. 114] EXHIBIT "F" TO SUPPLEMENTAL BILL

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF FLORIDA

In Equity

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. S. WELLS, E. S. MATTHEWS, and MAMIE G. EATON, Defendants

To the Honorable the Judges of the United States District Court for the Northern District of Florida:

Now comes Atlantic Coast Line Railroad Company, and humbly complaining, brings this, its Bill in Equity, against

A. S. Wells, E. S. Matthews and Mamie G. Eaton, who are the Railroad Commissioners of the State of Florida, and respectfully avers:

1st. Complainant is a corporation, created and existing under the laws of the State of Virginia, a citizen of the State of Virginia, doing business as a Common carrier by railroad in the State of Florida, pursuant to the laws of Florida.

2nd. The Defendants, A. S. Wells, E. S. Matthews and Mamie G. Eaton, are residents and citizens of the State of Florida (the said Wells residing in Leon County, the said Matthews in Bradford County and said Eaton in Jefferson County), they are the sole members of the Railroad Commission of the State of Florida and the official residence of each of the said Defendants is in the Northern [fol. 115] District of Florida.

3rd. This is a suit of civil nature in equity, and arises under the constitution and laws of the United States, and is between citizens of different states, and the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00.

4th. That there was established under and pursuant to the laws of the State of Florida, prior to May 3rd, 1926, certain rates on logs, which rates were effective August 24th, 1925, as follows:

Logs, carload, except cedar logs, per car 50,000 pounds, excess in proportion. Cars to be loaded and unloaded by owner and not to be unloaded on the railroad right-of-way:

From A. C. L. R. R. Stations to A. C. L. R. Stations

Distance	
40 miles and under	$8 55 per car
60 miles and over 40 miles	10 50 per car
90 miles and over 60 miles	11 50 per car
100 miles and over 90 miles	13 00 per car
110 miles and over 100 miles	14 00 per car
130 miles and over 110 miles	16.00 per car
160 miles and over 130 miles	17 00 per car
170 miles and over 160 miles	18 50 per car

5th. On the 3rd day of May, 1926, the Georgia Public Service Commission, created under the Laws of the State of Georgia, brought its petition in the Interstate Commerce Commission, against the Atlantic Coast Line Railroad Company, in this it is alleged that the object of this complaint is to secure reasonable rates on logs from all [fol. 116] points on the Atlantic Coast Line Railroad Company, as hereinafter shown, within the State of Florida, to all destinations on the said Atlantic Coast Line Railroad Company, in the State of Georgia, and to remove any unjust discrimination or undue prejudice as found to exist, as provided in the Interstate Commerce Act.

The petition alleged that certain then existing rates on logs in carloads from named points in Florida on this complainant's lines to certain destinations on this complainant's lines in Georgia were unjust and unreasonable.

6th. The members of the Florida Railroad Commission appeared in said cause in defense of the Florida Intra-state rates, which were complained of and otherwise participated in the said proceedings, especially by filing with the said Interstate Commerce Commission a petition for reargument and reconsideration, which said petition was dated the 27th day of September, 1928.

7th. Other parties intervened in the said cause, a great deal of evidence was taken by the Interstate Commerce Commission, the said evidence being taken orally by the examination of many witnesses, the hearing lasted for several days. The evidence was taken at Valdosta, Georgia, on October 20th, 21st and 22nd, 1926, and again at Jacksonville, Florida, on January 19th, *19th*, 20th and 21st, 1927.

8th. The Interstate Commerce Commission rendered its report and entered its order at a session held on the 2nd day of August, 1928, a copy of said report and order is [fol. 117] hereto attached and marked Exhibit No. 1, reference to which as often as may be necessary, is prayed.

9th. By the said order this complainant was required to establish on or before October 10th, 1928, upon notice to the Interstate Commission and to the general public, by not less than five days filing and posting in the manner described in Section 6 of the Interstate Commerce Act, and

thereafter to maintain and apply to the transportation of logs, except Walnut Cherry and Cedar, in carloads, from points on its lines in the State of Florida, North of and including, Jacksonville, Gainesbille, Burnett's Lake, and High Springs to destination on complainant's lines in the State of Georgia, certain rates in said order specified.

10th. Complainant was further ordered and required "to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination, found in said report to exist in the relation of Intra-State and Interstate rates, and to establish, put in force, and maintain rates for the transportation of lots, except Walnut, Cherry and Cedar, in carloads, minimum 40,000 pounds, in Intra-state Commerce within the State of Florida, which shall be the same as those prescribed in the next preceding paragraph hereof, as reasonable for transportation in Interstate Commerce from points in the State of Florida to destination in the State of Georgia."

11th. The rates prescribed by the Interstate Commission in the aforementioned report and order, were higher than [fol. 118] those which had been previously in existence for intrastate commerce in Florida, between points of origin and destination on the lines of this complainant.

12th. Prior to October 5, 1928, this complainant, in compliance with the report and order of the Interstate Commerce Commission aforementioned, filed with the Interstate Commerce Commission its Supplement No. 10 to J. H. Glenn's Agent's Southern Lumber Tariff I. C. C. A-659, wherein and whereby complainant cancelled the Florida Intrastate rates on logs mentioned therein applying on all of its lines within the State of Florida, and complainant did likewise file with the said Interstate Commerce Commission its Supplement 4 to Florida Local Tariff (No. 20) I. C. C. B-2466, wherein and whereby it purported to make effective as of October 10, 1928, between all points on all of its lines, in intrastate traffic within the State of Florida, the rates prescribed by the said Interstate Commerce Commission in its said order.

13th. The said tariffs have been filed and published more than the time prescribed by the Commission's order and by

the requirements of said paragraph 6 of the Interstate Commerce Act, and have long since become the lawfully filed tariffs governing the said intrastate transportation of logs in the State of Florida, from all points of origin to all points of destination on the lines of complainant in Florida; but by various orders of the Interstate Commerce Commission, the date of application of the said rates has been postponed to the 8th day of February, 1929. Said tariffs cover all intrastate movements of logs over the lines of the Atlantic Coast Line Railroad in Florida, except certain logs which are known as "short logs"; that is logs not over six feet in length and of certain kinds, all of which is more fully set out in the tariffs governing the movements of such short logs.

[fol. 119] Complainant is informed and believes, and on information and belief alleges, that said "short logs" were excluded from the operation of said order of the Interstate Commerce Commission dated August 2, 1928, by an order of the Interstate Commerce Commission entered on February 5, 1929, which the Complainant is informed and believes reads as follows, to-wit:

"Upon further consideration of the record in the above entitled proceeding in and for good cause shown;

It is ordered, that the order heretofore entered in this proceeding on August 2, 1928, be and is hereby amended as follows:

By inserting after 'logs except walnut, cherry and cedar' in the second, third and fourth paragraphs of said order the following: 'and except ash, gum, hickory, oak, pine and cypress logs not over six feet in length.'

It is further ordered that in all other respects the said order shall remain in full force and effect."

Referring to which Complainant avers that it expressly reaffirms the prior order of the Interstate Commerce Commissio*j*, and there is no longer any doubt or question about the log rates to be charged on all classes of log transportation, in so far as the same is covered by the order of said Commission amended as above, and that the same has force and effect to prescribe, as the Interstate Commerce Commission has done, all rates, whether relating to inter or intrastate

traffic, throughout the State of Florida, and the same is the law by which everyone must be bound.

[fol. 120] 14th. On or about November 27, 1928, the State of Florida and A. S. Wells, E. S. Matthews and Mamie G. Eaton, as and constituting the Florida Railroad Commission, filed their bill in the United States District Court, in and for the Northern District of Georgia, Atlanta Division, said bill having been filed against the United States of America and the Interstate Commerce Commission. Complainants therein sought to enjoin and set aside so much of the said order of the Interstate Commerce Commission as required this complainant to establish and put in force rates on logs in intrastate commerce, within the State of Florida. There was a trial and hearing had before three United States Judges, constituting for that purpose the United States District Court for the Northern District of Georgia.

15th. The said Court rendered a decree on the 17th day of January, 1929, in which it denied said complainants therein the relief prayed and their said bill was dismissed.

16th. In an opinion accompanying the said decree, the Court said, "We think it (meaning the said order of the Interstate Commerce Commission) can also be construed as limited to points of origin on the Atlantic Coast Line Railroad North of and including Jacksonville, Gainesville, Burnett's Lake and High Springs. The existence and availability of logs at such origins was fully investigated, and at others, not. The Commission confined its order on interstate rates expressly to these origins and dealt with the intrastate rates only by reference to the order fixing the interstate rates, declaring that the rates in intrastate commerce within the State of Florida shall be the same as those prescribed in the next preceding paragraph hereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia."'

[fol. 121] 17. The Court entered no order restraining the order of the Interstate Commerce Commission; the defendants herein made no application to the Interstate Commerce Commission, for any change in or modification of its said report and order, attached as Exhibit No. 1 hereto.

18. On the other hand, the defendants hereinbefore described, and who are the railroad Commissioners of the State of Florida, without notice to this Complainant, made and entered a writing, which it calls its order No. 979, which was issued January 30th, 1929, effective instanter, a copy of which is attached hereto and marked Exhibit No. 2, reference to which is prayed as often as may be necessary.

19. The effect which the defendants herein claim for the said above mentioned writing, Order No. 979, is in substance as follows:

To delimit the effect of the aforementioned report and order of the Interstate Commerce Commission.

As to territory, and

To assert that the rates prescribed by the Interstate Commerce Commission and by the schedules filed with the Interstate Commerce Commission by this complainant and described in the said writing called Order No. 979, are not and will not become effective because they were not made with reference to certain rules and orders of the Florida Commission; that is after having gotten the consent of the said Florida Commissioner.

[fol. 122] 20. The said writing of the Florida Commission, if it becomes operative, will take out of the scope and protection of the Interstate Commerce Commission's order and out of the scope of the said schedules and tariffs so filed with the Interstate Commission, all of those shipments which originate on that part of complainant's lines of railroad in the State of Florida, known as its Perry Branch, the lines of said Perry Branch beginning at the line between the State of Florida and Georgia, near the City of Thomasville, Georgia, and running in a Southeasterly direction through Perry and Carbur and Wilcox. A very heavy movement of logs to Florida destinations originates on said Branch and that movement was the subject of considerable investigation and of such evidence in the hearing before the Commission, and was and is within the scope of the Interstate Commission's order and of the said filings with the Interstate Commission.

21. The said delimitation which the Florida Commission undertakes to make, would take out of the operation of In-

terstate Commerce Commission Order and Report, the logs which originate on the said Perry Branch lines of the Complainant and on the other lines in Florida destined to Palatka, Florida, moving intrastate.

22. The number of shipments so originating is very large, and that movement, present and prospective, was also the subject matter of much evidence before the Commission.

23. The purported order of the Florida Commission, if allowed to become effective, will eliminate from the operation of the report and order of the Interstate Commerce [fol. 123] Commission and from said filings by this Complainant with the Interstate Commission, shipments originating on the lines of this complainant in Florida destined to Lacoochee, Florida, as to which there is a considerable amount, which was the subject of much investigation and of much evidence before the Interstate Commerce Commission.

24. The Interstate Commerce Commission's order is plain. It speaks for itself. It operates over all of the lines of railroad of this complainant in intrastate commerce (both origin and destination being on the lines of this complainant) in the State of Florida, for the distance mentioned, to-wit: 170 miles.

25. The Interstate Commerce Commission found that the rates which it ordered to be suspended and superseded did and do constitute the unjust and undue and unreasonable prejudice and which it sought to remove. The Florida Commission seeks to diminish the action of the Interstate Commerce Commission and to limit both its order and the filings made by complainant with the said Interstate Commerce Commission in carrying out its said order, as hereinbefore mentioned, and so diminish it, that it will have either no effect or no appreciable effect. The Florida Commission's action, if allowed to stand, will make the Interstate Commerce Commission's action either completely null or nearly so, and will likewise annul almost completely the said filings with the Interstate Commission made by complainant in complying with said order.

26. The right of this complainant in these circumstances to file the rates prescribed by the Interstate Commerce Com-

mission, as to intrastate traffic, was and is, not dependent upon the rules and regulations of the Florida Commission. [fol. 124] The rates and fares, charges, classification, regulations and practices prescribed by the Interstate Commerce Commission are to be observed while in effect, by the carriers, parties to the proceeding "the law of any State or the decision or order of any State authority to the contrary, notwithstanding," as is prescribed by Section 13, subsection 4 of the Act of Congress to Regulate Commerce, which is relied upon.

27. The Florida Commission has declared that the Interstate Commerce Commission's order, and the said filings made by complainant with the said Interstate Commerce Commission in carrying out its said order, should be effective to only the limited extent therein described, while the Interstate Commerce Commission declares that its order is effective over all of the lines of the Atlantic Coast Line Railroad Company in the State of Florida.

28. The Florida Commission is seeking to make a direct conflict with the Interstate Commerce Commission's order and with the application thereof and with said filings.

29. The subject matter of the Florida Railroad Commission's order was not within its jurisdiction. The said Florida Commission, in undertaking to make its said order, has proceeded in conflict with the order of the Interstate Commerce Commission, and of its authority vested in it under the Commerce Clause of the Constitution of the United States and of the various Acts to regulate commerce enacted under authority thereof, and especially in conflict with the Interstate Commerce Act, which was approved February 4, 1887, and amendments thereto, and more especially in conflict with the authority conferred by Section 13 of the said Act, all of which provisions of the Constitution and of the said Acts of Congress are relied upon.

30. The said Florida Commission has proceeded in direct opposition to the opinion and decree of the United States [fol. 125] District Court of the Northern District of Georgia, hereinbefore referred to; for that

31st. The said opinion was in effect a direction to the Florida Commission to apply to the Interstate Commerce

Commission for further relief, if the Florida Commission felt itself aggrieved.

32nd. The Florida Commission's bill was dismissed on the showing presented, and relief was denied; and the Florida Commission, acting in disgard of said direction, has not applied to the Interstate Commerce Commission, but has undertaken to say that it has the power to say what are the limits of the Interstate Commerce Commission's orders, and that its power will be controlling, and not that of the Interstate Commerce Commission; while, in truth and in fact, the Interstate Commerce Commission, in the scope of its authority, is superior to that of the Florida Commission, and the Florida Commission's authority or power in such matters, is to be exercised in subordination to that of the Interstate Commerce Commission.

33rd. Your Complainant operates, in intrastate and interstate commerce, in the State of Florida about 2,200 miles of rail lines. It has and operates rail lines in the States of Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida, and it carries on a general transportation business, as a carrier by railroad, subject to the Interstate Commerce Act, over its own rails, which are somewhat [fol. 126] in excess of 5,100 miles. This was true at the time this order was entered, and has been true ever since.

34th. The movement of logs contemplated and effected by the matters and things herein set out, is very great, as is indicated by the report of the Interstate Commerce Commission, which does not undertake to recite the full extent of the said movement, but one statement from the said report will give an indication of the said movement—"The record also shows that intervenor, Brooks-Scanlon Corporation, on August 31st, 1926, owned timber in Waukulla, Jefferson, Madison, LaFayette and Dixie Counties, Florida, estimated to contain 1,207,432,000 feet." One shipper had shipped, according to said report, between 1905 and 1926, 128,168 carloads. There were a number of other shippers with timber holdings comparable to those above mentioned. The shipments each day cover many carloads and the difference in the rate prescribed by the Interstate Commerce Commission and those sought to be enforced by the Railroad Com-

mission of Florida will amount to many thousands of dollars; which difference constitutes a very great and unreasonable burden upon, and discrimination against, interstate commerce.

35th. Complainant alleges that if allowed to prevail, the Florida Commission's action will have the effect of causing the utmost lack of uniformity and the greatest conflict between two authorities, as to which the Interstate Commerce Commission is supreme within its field.

[fol. 127] 36th. If the Florida Commission's order is not restrained, this complainant will be moving the same logs at the same time under two authorities, each claiming to be supreme, each fixing different rates, each requiring things inconsistent with the authority of the other.

37th. If complainant fails to obey the said order of the Interstate Commerce Commission, that Commission will undertake to subject it to many fines, penalties and punishments, and its officers and agents to prosecutions, fines and imprisonments. If it fails to comply with the Florida Commission's purported order, the Florida Commission will assert that complainant is subject to many fines and penalties on that account; and shippers will contend that the Florida Commission's rates are in effect, and complainant will contend that the Interstate Commerce Commission's rates are in effect; and these facts will give rise to a multitude of conflicting litigation, and to a multiplicity of suits in equity and actions at law, all of which are inconsistent with the laws in such cases made and provided.

38th. Your complainant is bound to adhere to the rules prescribed by the Interstate Commerce Commission and to conform thereto "Unless relieved by the Commission or enjoined from complying with it by decree of a court having jurisdiction." This complainant has not been relieved by the Commission from complying with its aforementioned report and order; nor has it been so enjoined by a court having jurisdiction.

39th. There is but one method prescribed by law for setting aside an order of the Interstate Commerce Commission in whole or in part, and that is through a bill in equity in

the United States District Court, that Court then being presided over by three Judges, as prescribed by Statute. The Florida Commission sought this relief and lost, and is now undertaking to make its own ex parte order to supercede the order of the superior authority.

[fol. 128] 40th. Complainant further alleges that it has no plain, adequate or complete remedy at law and it is therefore necessary for it to come into this court of equity to invoke the extraordinary remedies thereof for the purpose of avoiding a multiplicity of suits and prevent incalculable harm and irreparable injury, loss and damage from being visited upon complainant, its officers and agents in the premises.

Wherefore complainant waives discovery under oath of the defendants, and humbly prays:

(a) That subpœna issue against the defendants, A. S. Wells, E. S. Matthews and Mamie G. Eaton, who constitute the Florida Railroad Commission; that the same require the same defendants to be and appear in this Court to answer or otherwise plead to this complainant's bill in the manner prescribed by law.

(b) That this Court will grant to complainant herein an order restraining the enforcement of the writing of the Florida Railroad Commission, herein mentioned as Exhibit No. 2.

(c) That a restraining order be issued instanter, for that the Interstate Commission's order will become inoperative on the 8th day of February, 1929, and that complainant is bound to conform thereto, under pains and penalties prescribed by statute, and it will be impracticable to summons a Court, constituted, as required by law, in such cases made and provided and to hear and determine this cause before the 8th day of February, 1929.

(d) That an order issue requiring the defendants to show cause, at a time and place to be fixed therein, why the [fol. 129] prayers of this complainant should not be granted, and why interlocutory injunction should not be issued against the defendants, restraining and enjoining

them and their officers and agents from enforcing their said writing, dated January 30th, 1929, hereinbefore set out as Exhibit No. 2, to this bill, and likewise restraining and enjoining them from enforcing any part thereof, and that upon such hearing the defendants and each of them, their officers, agents and representatives, be restrained and enjoined from enforcing the said writing or any part thereof; and that such order continue in force and effect until the further order of this Court.

(e) That upon final hearing there will be made and entered a decree and order of this Honorable Court annulling and setting aside and enjoining the defendants herein from enforcing the said writing dated January 30th, 1929, copy of which is set out as Exhibit No. 2.

(f) That the said aforementioned writing issued by the said defendants be held to be null and void, as exceeding their authority and jurisdiction.

(g) Complainant prays that the defendants be restrained and temporarily and permanently enjoined from doing any act or thing or entering any order or other proceedings to interfere with the full enforcement of the order of the Interstate Commerce Commission hereinbefore mentioned, set out as Exhibit 1 hereto attached.

(h) That complainant have all other and further relief which may be meet or appropriate to give as to each and [fol. 130] all of the matters and things mentioned in this bill.

For all of which complainant respectfully prays.

Atlantic Coast Line Railroad Company, by W. E. Kay, Alston, Alston, Foster & Moise, Its Attorneys. W. E. Kay, W. E. Moise, of Counsel.

[fol. 131] STATE OF FLORIDA,
County of Duval:

Before me, the undersigned Notary Public, duly authorized to administer oaths, in said State and County, personally appeared W. R. Pittman who being by me personally sworn, deposes and says on oath that he is agent of the Atlantic Coast Line Railroad Company, the Complainant herein; that the facts therein set out are true, except

where they are stated on information and belief or as a matter of opinion, and this deponent verily believes them to be true.

W. R. Pittman.

Sworn to and subscribed before me this 6 day of February, A. D. 1929. A. N. Weil, Notary Public, State of Florida at Large. My commission expires April 2, 1929.

[fol. 132] IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF FLORIDA

In Equity

No. —

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

v.

E. S. MATTHEWS, A. S. WELLS, and MAMIE G. EATON, Defendants

Now comes Atlantic Coast Line Railroad Company, and with leave of Court previously obtained, amends its bill filed in the above stated cause by adding thereto the following:

1

On February 7, 1929 the Interstate Commerce Commission made and entered an order in the aforesaid cause No. 18364 pending before it and in said order directed and stated that the order originally passed by it in said cause on August 2, 1929, making of force certain rates therein stated on the transportation of logs in intrastate commerce in the State of Florida as amended on February 5, 1929, is now of full force and effect on all lines of Atlantic Coast Line Railroad Company throughout the whole of the State of Florida, in substance stating that in order to clarify the situation the order as previously amended shall apply within and throughout the entire State of Florida without exception.

The said orders of the Interstate Commerce Commission dated August 2, 1928, February 5, 1929 and February 7, 1929 were made and entered upon and after full consideration of the evidence before it and such evidence fully supported and authorized the making of all of said orders.

Atlantic Coast Line Railroad Co., by W. E. Kay,
Alston, Alston, Foster & Moise, Its Attorneys.
W. E. Kay, E. W. Moise, of Counsel.

[fol. 133] FLORIDA,
Dade County:

Personally appeared before me the undersigned E. W. Moise who being duly sworn, deposed and said that he is of counsel for Atlantic Coast Line Railroad Company, the above named complainant, and that the facts stated in the foregoing amendment are true to the best of his knowledge, information and belief.

E. W. Moise.

Sworn to and subscribed before me this February 8, 1929. Della Sanders, Notary, etc.

The foregoing amendment allowed this February 8, 1929.
Wm. G. Shepard, U. S. Judge.

[fol. 134] IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF FLORIDA

In Equity

No. —

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

v.

E. S. MATTHEWS, A. S. WELLS, and MAMIE G. EATON,
Defendants

Answer of Defendants

Come now the defendants now and at all times hereafter saving unto themselves all manner of benefit of advantage

or exception that may be had or taken to the many errors, uncertainties, and imperfections in the said Bill of Complaint as amended contained and for answer thereto or to so much thereof as is necessary, these defendants, answering, say:

1. These defendants admit that the said complainant is a corporation created and existing under the Laws of Virginia, a citizen of the State of Virginia, doing business as a common carrier by railroad in the State of Florida pursuant to the Laws of Florida.

2. Answering paragraph 2 of said Bill, these defendants admit that they are residents and citizens in their individual capacity of the several counties in Florida mentioned in Paragraph 2 of said Bill and are sole members of the Railroad Commission of the State of Florida; That [fol. 135] the office of these defendants as Railroad Commissioners as aforesaid is at Tallahassee, in the northern district of Florida.

3. Answering paragraph 3 of said Bill and each and every part of said Bill, these defendants aver that this is a suit of a civil nature in equity but deny and say that it is untrue that this suit arises under the Constitution or Laws of the United States and deny and say that it is untrue that it is between citizens of different states. These defendants aver that the matter in controversy set forth in said bill is the enjoining of a lawful rate duly established under the Laws of Florida and is not in any way within the scope of any order or regulation or authority asserted under the Constitution or Laws of the United States or by any board, body or officer of the United States.

4. That these defendants aver that there was established under and pursuant to the laws of Florida long prior to May 3, 1926, and that there is now in force and effect thruout Florida the certain scale of rates for the transportation of logs except cedar logs set forth in paragraph 4 of said Bill.

5. Answering paragraphs 5, 6, 7, 8, 9, 10 and 11 of said Bill of Complaint and each and every part of said bill, that on to-wit, May 3, 1926, the State of Georgia, acting by and thru the Georgia Public Service Commission, filed with and before the Interstate Commerce Commission a certain com-

plaint wherein the Atlantic Coast Line Railroad Company was named defendant. That in and by said complaint said Georgia Public Service Commission alleged that certain then existing rates on logs in carloads from points in Florida on certain of said Atlantic Coast Line Railroad Company's lines then existing to certain destinations on said company's lines in Georgia were unjust and unreasonable and as compared with the said scale of rates set forth in paragraph 4 of said Bill herein filed (hereinafter sometimes [fol. 136] called the Florida Intrastate scale) was then and there unduly preferential of intrastate shippers in Florida, unduly prejudicial to interstate shippers from Florida to Georgia and unduly discriminatory against interstate commerce. That in and by said complaint the said Georgia Public Service Commission sought the establishment of reasonable, non-prejudicial and non-discriminatory rates for future use. A true copy of said complaint is attached to and embodied in the transcript hereinafter referred to and hereto attached and made a part thereof. Said copy of said complaint being Exhibit A in said transcript.

That after the filing of said complaint as aforesaid defendant thereto, the said Railroad Company, appeared in said proceedings and filed its Answer wherein among other things it denied the unlawful acts alleged in said complaint.

That this defendant filed no formal petition of intervention or other pleadings in said proceeding but appeared therein in defense of said Florida Intrastate scale. That other interested parties intervened in the said suit and so it was that such proceedings were had as that on to-wit: August 2, 1928, there was entered by said Interstate Commerce Commission its final findings, decision and order wherein and whereby the said Railroad Company was notified and required to establish on or before October 10, 1928, upon notice to said Interstate Commerce Commission and to the general public by not less than 5 days filing and posting in the manner prescribed in Section 6 of the Interstate Commerce Act and thereafter to maintain and apply to the transportation of logs, except walnut, cherry and cedar, in carloads, from points on its lines in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, Florida, to destinations on its line in the State of Georgia, the following rates in cents per

hundred pounds, subject to a minimum weight of 40,000 pounds:

Distance	Rate
[fol. 137]	
10 miles and less	2.5 cents
30 miles and over 20	3.5 cents
40 miles and over 30	4.0 cents
55 miles and over 40	4.5 cents
70 miles and over 55	5.0 cents
85 miles and over 70	5.5 cents
100 miles and over 85	6.0 cents
120 miles and over 100	6.5 cents
140 miles and over 120	7.0 cents
160 miles and over 140	7.5 cents
170 miles and over 160	8.0 cents

And said Interstate Commerce Commission notified the said Railroad Company to cease and desist from practicing certain alleged undue preferences and advantages, undue prejudices and unjust discriminations found in said decision to exist in the relation of Interstate and Intrastate rates, and to establish, put in force and maintain rates for the transportation of logs except walnut, cherry and cedar in carloads, minimum weight 40,000 pounds in intrastate commerce within the State of Florida which should be the same as those prescribed by said order as reasonable for transportation from points in Florida to destinations in Georgia. The true copy of said decision and order, marked Exhibit B, is embodied in the transcript hereinafter referred to and hereto attached.

6. Answering paragraphs 12 and 13 of said Bill and each and every part thereof these defendants say that thereafter and prior to October 5, 1928 said railroad company purporting to comply with said decision and order of said Interstate Commerce Commission did file with said Interstate Commerce Commission its supplement to J. H. Glenn's agent's Southern Lumber Tariff I. C. C. A-659 wherein and whereby the said Company purported to cancel the said Florida intrastate scale on all of its lines within the State of Florida. And said Company purporting to comply with said decision and order of said Interstate Commerce Commission did likewise file with said commission last named its

supplement 4 to Florida Local Tariff (No. 20) I. C. C. B-2466 wherein and whereby it purported to make effective as of October 10, 1928, between all points on its lines in intrastate traffic within the State of Florida the same rates which were prescribed by said order of said Interstate Com- [fol. 138] merce Commission for application from points on the lines of said company in Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in Georgia.

That thereafter proceedings were had before said Interstate Commerce Commission so as that the respective effective dates of said order and of said alleged cancellation of said Florida intrastate scale and of the alleged application of the new rates sought to be established in lieu thereof was postponed until February 8, 1929.

That said Railroad Company also in purported compliance with the said order of the said Interstate Commerce Commission by the filing of certain supplements to then existing tariffs prior to October 10, 1928, likewise sought to materially increase the then existing and now obtaining rates for the transportation of certain logs under 6 feet in length in intrastate traffice between points in Florida, notwithstanding the plaintiff in said bill now admits that said rates on said last described logs (referred to in said bill as short logs) were not covered by or involved in said proceedings before said Interstate Commerce Commission and would have attempted to put into effect such short log rates unless restrained from so doing by the order of the Circuit Court of Duval County, Florida, as hereinafter set forth.

7. Answering paragraphs 14, 15, and 16, of said bill of complaint and each and every part of said bill, these defendants aver that thereafter on to-wit: November 27, 1928, the State of Florida, pursuant to the acts of Congress did file in the United States District Court for the Northern District of Georgia, Atlanta Division, its bill of complaint against the United States and said Interstate Commerce Commission wherein and whereby said state sought to enjoin and set aside so much of said order of said Interstate Commerce Commission as required the said railroad company to establish and put in force rates on logs in intrastate commerce within the state of Florida. That

[fol. 139] said United States and said Interstate Commerce Commission appeared separately and filed their respective answers to said Bill so filed by said State. The trial and final hearing was had before three United States Judges constituting the said United States District Court.

That said court rendered its decision and decree on January 17, 1929 and in and by its said decision the said court construed and defined the said order of said Interstate Commerce Commission as being limited in scope inso far as it prescribed intrastate rates to rates on logs except walnut, cherry and cedar from points on said company's lines in Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, Florida, in one direction northbound for distances not exceeding 170 miles and found that said order in no way affected any intrastate rates from any other points of origin on logs moving in any other direction. And the said United States District Court by its decision and opinion having so limited the scope, operation, and effect of said order of said Interstate Commerce Commission thereupon entered its decree wherein and whereby the said court decreed that for the reasons stated in said opinion the said bill was dismissed.

A copy of all pleadings and of the decision, opinion and decree of the *of* said United States District Court for said northern district of Georgia, marked Exhibit C, and is embodied in the transcript hereinafter referred to and made a part hereof.

8. Answering paragraphs 17, 18, 19, 20, 21, 22 and 23 to 40 (both inclusive) of said Bill of Complaint and each and every part of said Bill, these defendants aver that in and by said Bill so filed by said state in said United States District Court for the northern district of Georgia, said State of Florida put in issue the territorial scope of the said order of the Interstate Commerce Commission, and the said United States and the said Interstate Commerce Commission by their answers in said suit joined issue on [fol. 140] the territorial scope thereof and said United States District Court by its decision, opinion and decree limited the operation, scope and effect of the said order of the said Interstate Commerce Commission as aforesaid. That these defendants recognizing that they were bound

by the decision and decree and opinion of the said United States District Court for said Northern District of Georgia so long as the same should remain unmodified and unreversed did on to-wit: January 30, 1929 officially as Railroad Commissioners make and cause to be entered an order wherein and whereby the increase in rates on logs except walnut, cherry and cedar moving in carload quantities intrastate in Florida prescribed by the said Order of the said Interstate Commerce Commission as construed and limited in scope by the said United States District Court were recognized and declared to be in force and effect in full compliance with the said Order of said Interstate Commerce Commission as construed and limited by said United States District Court. And in and by said order of the said Railroad Commissioners of Florida it was declared that the then existing Florida Intrastate Scale above set forth should remain in force and effect from all points of origin and to all movements in Florida intrastate traffic to which it was applicable save and except the points of origin and movements to which the said scale of rates so prescribed by said order of said Interstate Commerce Commission as construed by said court was made applicable. And in and by the said order of said Florida Railroad Commissioners it was declared that the said intrastate rates on short logs then existing should continue to exist thruout Florida the said short log scale not having been within the issues in said proceedings before said Interstate Commerce Commission or in issue in said proceedings before said United States District Court.

That for more than ten years last past there has been and still is in force and effect a rule and regulation of the said Florida Railroad Commissioners by them duly adopted known as General Rule #7 as follows:

[fol. 141] Increased Rates

"In no case shall any railroad or common carrier doing business wholly or in part in the State of Florida advance or increase any special rate of other rates, demurrage charges, storage or wharfage charges without first submitting the proposed increase rate or rates, demurrage, storage or wharfage charges to the railroad commissioners and receiving their approval."

That for more than two years last past there has been and still is in force and effect a duly adopted general rule and regulation known as General Rule Number 16 of the Railroad Commissioners of the State of Florida, in part as follows:

Discontinuance of Rates, Facilities, Privileges, and Service

"All rates now in effect or which may hereafter become effective, which are not higher than the maximum rates prescribed or approved by this Commission, whether such rates are the result of voluntary action upon the part of any company, corporation or other person subject to the jurisdiction of this commission, or otherwise, are hereby established as the rate of the railroad commission of Florida, and no such rates shall be discontinued nor raised without the consent of the railroad commission first being obtained, but all such rates shall continue in force without hindrance the same as the rate prescribed by the commission. * * *"

That the remaining portions of said last mentioned rule have no application to the subject matter of this suit.

That at no time herein mentioned has the said railroad company submitted to the said Railroad Commissioners any proposed change, increase or reduction of said Florida intrastate scale of the said short log scale and at no time herein mentioned have said Railroad Commissioners approved any change, increase or decrease in said scales or either of them or the cancellation, modification or withdraw-l of them or either of them.

That no rate from any point of origin or station on the lines of defendant was affected by said order of said In-
[fol. 142] terstate Commerce Commission as construed and limited by the said United States District Court except rates on logs (other than logs not over 6 feet in length and other than cedar logs) from points or origin and stations north of and including Burnett's Lake, Florida, situate upon the line of said railroad company which extends northwardly from Burnett's Lake, Florida, thru High Springs, Florida, thru Baker's Mill, Florida, to and beyond Du Pont, Georgia, and except from points of origin and stations north of and including Gainesville, Florida,

situate upon the line of the defendant which extends northwardly from Gainesville, Florida, thru Burnett's Lake and thru Jacksonville, Florida, to and beyond Folkston, Georgia.

That these defendants aver at the time the said petition was filed by the said Georgia Public Service Commission before the said Interstate Commerce Commission the said so-called Perry branch did not extend from Florida into Georgia nor did the said Perry branch extend from Florida into Georgia at any time at which any of the testimony was taken in said proceeding, but on the contrary at all such times said Perry branch extended from Perry, Florida, southwardly to Wilcox, Florida, and not otherwise, and no station on said Perry branch is north of Jacksonville, Gainesville, Burnett's Lake, or High Springs, Florida, or either of them on the lines of the defendant. And no point of origin or station on said Perry branch is within the scope or effect of said order of said Interstate Commerce Commission as construed by said United States Court and no south bound movements of traffic intrastate between points in Florida and no movement other than north bound movement is within the scope and effect of said last described order.

And these defendants deny and say that it is untrue that the purpose, intent or effect of the said order entered by the said Florida Railroad Commissioners is or does limit, [fol. 143] or affect the said order of the said Interstate Commerce Commission as construed and limited by the said United States District Court or any rate prescribed thereunder, but on the contrary the purpose, intent and effect of the said order of the said Florida Railroad Commissioners was to recognize that within the territory and with respect to the movements sought to be affected by the said order of said Interstate Commerce Commission as construed by said United States District Court the said Florida intrastate rate was superseded by the said order of said Interstate Commerce Commission as construed by said court until such time as the said decision, opinion and decree of the said court should be modified or reversed, and to declare that, as in duty bound under their respective oaths the said Florida Railroad Commissioners are bound

to do, the said Florida Intrastate Rate, except to the extent that the same was modified by the superior Federal power as aforesaid or modified upon due application made to said Florida Railroad Commissioners by said Railroad Company, would remain in full force and effect and the said short log rates would remain in force and effect.

That a copy of said order of said Florida Railroad Commissioners marked Exhibit D constitutes a part of the transcript hereinafter referred to and made a part hereof.

That notwithstanding the decision and opinion of the said United States District Court, and notwithstanding that said short log rates were never within the scope of the said opinion of the said Interstate Commerce Commission or the proceedings in said United States District Court, the said Railroad Company asserted to the said Florida Railroad Commissioners that on and after February 8, 1929, the said railroad company would not apply the said Florida Intrastate Scale between any stations or anywhere in Florida and would not apply the said short log scale between any stations or anywhere in Florida.

[fol. 144] That under the statute laws and oaths of the said Florida Railroad Commissioners it was and is the duty of said Florida Railroad Commissioners in the name of and behalf of the State of Florida to enforce the application for intrastate traffic in Florida of the lawful rates duly established pursuant to the Laws of Forida except insofar as such rates may be superseded by rates prescribed by said Interstate Commerce Commission acting within the scope of its authority.

And so it was, that to-wit: on January 31, 1929, the said State of Florida acting by and thru the said Railroad Commissioners, by T. T. Turnbull, special counsel, designated by them, joined by Fred H. Davis, attorney-general of said State, did file in the Circuit Court, in and for Duval County, Florida, in chancery, its Bill of Complaint wherein and whereby it sought temporary and permanent injunctions and restraining orders enjoining and restraining said Railroad Company from demanding, charging, or collecting on or after February 8, 1929, any rates or charges higher than those specified in said Florida Intrastate Scale for the transportation of logs (other than cedar logs and other

than logs not over 6 feet in length) in carload quantities for distances up to but not exceeding 170 miles, except for transportation northbound from points of origin north of and including the said Jacksonville, Gainesville, Burnett's Lake and High Springs (said north bound movement from points of origin north of and including the said four last named points being the points of origin and the movement with respect to which the paramount federal power had superseded the jurisdiction and power of said Florida Railroad Commission). And also in and by said bill so filed in said state court sought temporary and permanent injunctions restraining and enjoining the said Atlantic Coast Line Railroad Company from demanding, charging or collection, on or after February 8, 1929, higher than the Florida In- [fol. 145] trastate short log scale established under the Laws of Florida and then in force and effect.

That thereafter such proceedings were had as that temporary restraining order and injunctions prayed by said bill in said state court, as hereinabove set forth, were duly issued by the said state court and said suit in said state court is still pending therein.

That a transcript of the entire record of the proceedings in said state court is hereto attached and made a part hereof and is the transcript hereinabove referred to from time to time.

9. Further answering said bill of complaint and each and every part thereof, these defendants aver that each and every part of said bill of complaint is untrue save those in this Answer specifically admitted to be true.

10. That these defendants aver that the said bill of complaint as amended is insufficient in law and move the Court to dismiss the said bill of complaint and as grounds for such motion assert the following grounds severally:

a. That said bill of complaint is without equity.

b. That it appears from said bill that the said Railroad Commissioners of Florida are acting within the scope of their authority.

c. That it appears from said bill of complaint that the matters here complained of relate only to intrastate rates applicable wholly beyond and without the scope and limita-

tions of the said order of said Interstate Commerce Commission as construed and defined by said federal court.

d. It appears from said Bill of Complaint that this court is without jurisdiction.

e. It appears from said bill of complaint that the relief therein sought is beyond the jurisdiction of this court.

[fol. 146] f. It appears from said bill of complaint that complainant is not entitled to the relief or any of the relief prayed in said bill.

g. It appears from said bill of complaint that this bill is against these defendants in their individual capacities and not in their official capacities.

Wherefore these defendants pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

A. S. Wells, E. S. Matthews, and Mamie G. Eaton, by Theo. T. Turnbull, Special Counsel. Theo. T. Turnbull, Solictor and of Counsel for the Defendants. Fred W. Davis, Attorney-General, State of Florida.

Attached as exhibit was copy of transcript of record of Duval County case of The State of Fla. vs. A. C. L. R. R. Co.

[fol. 147] STATE OF FLORIDA,
County of Dade:

Personally appeared before me, T. T. Turnbull, who being by me first duly sworn, deposes and says: that he is solicitor and of counsel for defendants in above entitled cause, and is special counsel designated by the Florida Railroad Commissioners and that he has read the foregoing Answer and that the same is true.

Theo. T. Turnbull.

Sworn to and subscribed before me this 8th day of February, 1929. Margaret Trammell, Notary Public, State of Florida at Large. My commission expires 3/23/29. (N. P. Seal.)

[fol. 148] IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF FLORIDA.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. S. WELLS, E. S. MATTHEWS, and MAMIE G. EATON, Defendants

Supplemental Answer

Come now the defendants and by leave of Court first had and obtained file herein their supplemental answer to the bill of complaint herein and say:

I

That the said order of the said Interstate Commerce Commission dated February 7, 1929, and referred to in the amendment filed by the complainant to the bill of complaint herein on February 8, 1929, was published on February 7, 1929, and was entered and published long after the time of the entry of said order Number 979 entered on January 30, 1929, by these defendants as Florida Railroad Commissioners, and said last described order of said Interstate Commerce Commission without notice to these defendants and without these defendants being afforded an opportunity to be heard and without the taking of any additional evidence before or any further investigation by said Interstate Commerce Commission. And neither of these defendants had any knowledge at the time that said order No. 979 was entered, or at the time that the bill of complaint herein was filed, or at the time that this cause was argued before the Hon. William B. Sheppard at Miami, Florida, on February 7, 1929, that the said Interstate Commerce Com-
[fol. 149] mission had in contemplation any modification of its said order dated August 2, 1928. That these defendants first learned of the entry of said order after the conclusion of the argument before the said the Hon. William B. Sheppard at Miami on February 7, 1929, and after the Hon. William B. Sheppard had announced his decision in the premises, when the complainant by its solicitors informed

these defendants that on the following day, to-wit, February 8, 1929, the complainant would apply for leave to file the amendment to said bill which afterwards was filed by the complainant.

II

That said order of said Interstate Commerce Commission dated February 7, 1929, declared in effect that said order of said Interstate Commerce Commission dated August 2, 1928, was meant to be and was applicable on all the lines of the Atlantic Coast Line Railroad Company throughout the whole of the State of Florida without exception, notwithstanding that the said order of August 2, 1928, had been construed to be limited, with respect to intrastate rates in Florida, to points of origin North of and including Jacksonville, Gainesville, Burnett's Lake and High Springs by a court of competent jurisdiction, to-wit, the United States District Court for the Northern District of Georgia, Atlanta Division, three Federal Judges presiding pursuant to law, in a proceeeding in which the said complainant, Atlantic Coast Line Railroad Company, and these defendants as Florida Railroad Commissioners were adversary parties, and notwithstanding that the said United States District Court for the Northern District of Georgia had in effect declared that construed otherwise said order of said Interstate Commerce Commission dated August 2, 1928, would be void.

And so it was that as soon as practicable after the publication of the said order of said Interstate Commerce Commission dated February 7, 1929, these defendants, to-wit, on February 21, 1929, in the name and in behalf of the State of Florida and in their own behalf as Railroad Commissioners of Florida, did file in said United States District Court for the Northern District of Georgia their petition [fol. 150] for rehearing, setting forth the said order of said Interstate Commerce Commission dated February 7, 1929, and praying that said decree of said United States District Court for the Northern District of Georgia dated January 17, 1929, be opened up and set aside, and that the said last described cause be reheard, and that these defendants as Florida Railroad Commissioners as aforesaid, on their own behalf and on behalf of the State of Florida, be permitted

to file a supplemental bill in the nature of a bill of review in said cause. And said petition for rehearing was granted and leave to file said supplemental bill was granted and said supplemental bill was filed. And thereafter, to-wit, on March 6, 1929, the said cause was reheard by the said last described Court, three judges presiding pursuant to law. And at such rehearing the said Atlantic Coast Line Railroad Company was permitted to intervene and did intervene as party defendant to said cause.

III

That afterwards by its decree dated April 17, 1929, the said United States District Court for the Northern District of Georgia denied the relief prayed by said bill and supplemental bill and dismissed said bill and supplemental bill, for the reasons stated in the opinion of said Court dated March 22, 1929, wherein and whereby the said last described Court in effect reversed its opinion dated January 17, 1929.

IV

That as soon as practicable after the last described decree dated April 17, 1929, was signed by two Judges of said Court, and prior to the time of the actual entry of said decree, these defendants as Railroad Commissioners of Florida, to-wit, on April 20, 1929, did enter officially in their records an order wherein and whereby, among other things, these defendants as Florida Railroad Commissioners as aforesaid did declare their intention to appeal to the Supreme Court of the United States from the decree of the said United States District Court for the Northern District of Georgia dated April 17, 1929, to the end that said order of said Interstate Commerce Commission as amended and clarified as aforesaid should be enjoined, annulled and set [fol. 151] aside insofar as the same purported to affect intrastate rates on logs (other than logs under six feet in length) between points in Florida; and in and by said order these defendants as Railroad Commissioners of Florida as aforesaid did recognize that the said decision of the United States District Court sustaining the said order of the Interstate Commerce Commission was and is the law of the land until the same should be modified, set aside or reversed;

and thereupon these defendants as Railroad Commissioners of Florida as aforesaid, in and by said order did order that so much of said Order No. 979 entered by these defendants as Florida Railroad Commissioners on January 30, 1929, as related to intrastate rates between points on the lines of said complainant in Florida for the transportation of logs, except walnut, cherry and cedar, and except ash, gum, hickory, pine and cypress logs not over six feet in length, be and the same thereby was suspended so long as the said last described decree of said United States District Court for the Northern District of Georgia should remain in force and effect and unmodified and unreversed, or until the further order of the said Florida Railroad Commissioners.

V

That at no time and in no place or manner have these defendants, officially or otherwise, refused to recognize the binding force and effect of either of the orders of the said Interstate Commerce Commission as the same have been construed by the said United States District Court for the Northern District of Georgia, save before the said United States District Court for the Northern District of Georgia and before the said Supreme Court of the United States on appeal therefrom; that the said order No. 979 dated January 30, 1929, was in recognition of the binding force of said order of said Interstate Commerce Commission dated August 2, 1928, as construed by the said opinion of the United States District Court for the Northern District of Georgia and not otherwise; as likewise was the said order entered by these defendants as Railroad Commissioners as aforesaid on April 20, 1929, suspending the said order No. 979 dated January 30, 1929.

[fol. 152] VI

That these defendant as Florida Railroad Commissioners, on their own behalf as such and on behalf of the State of Florida, have taken and entered their appeal to the Supreme Court of the United States from the decision and decree of the said United States District Court for the Northern District of Georgia, Atlanta Division, dated April 17, 1929, and said appeal has been allowed; that in

the event the said decree of said United States District Court for the Northern District of Georgia shall be reversed and said order of the Interstate Commerce Commission be enjoined, annulled and set aside in whole or in part insofar as said order affects intrastate rates on logs in Florida, then and in such event these defendants as Railroad Commissioners of Florida, on behalf of the several shippers of Florida affected by said order, will recoup or recover or will assist such shippers to recoup or recover all sums paid by such shippers or charged or collected by said complainant for the transportation of logs by the complainant in excess of the intrastate scale of distance rates attacked in said proceeding before the said Interstate Commerce Commission; but so long as the said decree of the said United States District Court for the Northern District of Georgia, Atlanta Division, shall remain in force and effect and unmodified and unreversed these defendants as Railroad Commissioners, as in duty bound they ought to do, will abide the terms of said decree.

VII

That coincidentally with the filing of the bill of complaint in this Court the complainant did file in the United States District Court for the Southern District of Florida its bill of complaint in which the defendant herein were named as defendants, wherein and wher-by the complainant set forth, among other things, the filing by the State of Florida acting by and through these defendants, of the suit in equity referred to in paragraph numbered VIII of the answer herein, and set forth that the complainant on to-wit February 5, 1929, has sought to remove the said suit from said State court to said last described Federal court and that said State court had declined to surrender jurisdiction of said suit. And in and by said bill so filed by said com- [fol. 153] plainant in said United States District Court for the Southern District of Florida the complainant prayed, among other things, injunctions temporary and permanent, enjoining and restraining these defendants from further proceeding in said State court and for such other relief as in the premises might seem proper. And said suit came on to be heard before the Honorable William B. Sheppard, then duly assigned to the said Southern District of Florida

and duly exercising jurisdiction as Judge of the District Court thereof and sitting in Miami, and was presented to and heard by said Judge at the same time the bill of complaint herein was presented to and heard by said Judge.

That coincidentally with the filing of the amendment to the bill in this cause the complainant did file in said suit so pending in said United States District Court for the Southern District of Florida as amendment to the bill of complaint in such suit and such amendment was in all respects substantially of like import as the amendment to the bill in this cause. And the answer and motion to dismiss were duly filed by these defendants to said suits so pending in said United States District Court for the Southern District of Florida and to-wit on February 8, 1929, the said Judge last named, after due hearing, did dismiss the said suit so pending in said Southern District of Florida.

That afterwards, on application of the complainant herein, the said last named Judge did allow an appeal to the United States Circuit Court of Appeals, 5th Circuit, from the decree in said last described suit and thereupon the complainant did move the said United States Circuit Court of Appeals in said last described cause for an order restraining these defendants from enforcing or undertaking to enforce the said order No. 979 so entered by these defendants as Florida Railroad Commissioners as aforesaid, and also from enforcing or undertaking to enforce the said order entered by the said Circuit Court of Duval County, Florida, in said suit so filed in said State court by the State of Florida acting by and through these defendants as aforesaid.

[fol. 154] And afterwards, pursuant to said last described motion, the said Circuit Court of Appeals to-wit on February 14, 1929, did restrain these defendants, their agents, representatives and attorneys, until the further order of said last described Court, from enforcing or undertaking to enforce the said order of said Railroad Commissioners of the State of Florida, or said order entered in said Circuit Court for Duval County, Florida, and said restraining order so made and entered by the said United States Circuit Court of Appeals is still in force and effect.

And these defendants aver that these defendants by said order of said United States Circuit Court of Appeals are

restrained from doing each and every the things that by the injunction in this Court the complainant seeks to enjoin and restrain these defendants from doing.

VIII

And these defendants aver that because of the several matters and things set forth in the supplemental answer herein, as well as because of the several matters and things set forth in the original answer herein, the said temporary injunction prayed by the bill of complaint in this cause ought to be denied, and also that said bill ought to be dismissed.

IX

And these defendants aver that the said bill of complaint as amended is insufficient in law, and move the Court to dismiss the same, and as grounds for such motion assert each and every the several grounds of the motion to dismiss included in the answer of these defendants and likewise the further, additional grounds,

(h) That it is not made to appear that these defendants officially or otherwise have enforced or have attempted to enforce or will attempt to enforce any order or State rate in conflict with said order of said Interstate Commerce Commission dated August 2, 1928, as construed by the said United States District Court for the Northern District of Georgia.

[fol. 155] (1) That it is not made to appear that these defendants, officially or otherwise, have enforced or have attempted to enforce or will attempt to enforce any order or State rate in conflict with said order of said Interstate Commerce Commission dated August 2, 1928, as construed by said United States District Court for the Northern District of Georgia as such order is amended and clarified by said order dated February 7, 1929.

Wherefore these defendants pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

—— ——, Attorneys for Defendants.

[fol. 156] Copy

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF FLORIDA

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

v.

A. S. WELLS, E. S. MATTHEWS, and MAMIE G. EATON, Defendants

Order Denying Injunction and Dismissing Bill

This cause coming on to be heard this day upon the bill of the complainant and the amendment to the bill of complaint and motion for injunction of the complainant, and upon the answer and motion to dismiss of the defendants and having been argued by counsel for the respective parties and submitted to the court for its decision, and the court being advised in the premises,

It is thereupon considered, ordered, adjudged, and decreed as follows, viz:

1. That the action of the state railroad commission complained of in the bill of complaint extends wholly and solely to matters and things outside of the scope, operation and effect of the said order of the Interstate Commerce Commission referred to in said bill, and that the State Commission is acting within the scope of its authority.

2. That the injunction and restraining orders prayed by the complainant be and the same hereby are denied.

3. That the motion of the defendants to dismiss the said bill be and the same hereby is granted, and that the said bill be and the same hereby is dismissed.

Done and ordered in chambers at Miami, Florida this 8th day of February, A. D. 1929.

Wm. B. Sheppard, District Judge.

[fol. 157] EXHIBIT "E" TO SUPPLEMENTAL BILL

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA

In Equity

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

E. S. MATTHEWS, A. S. WELLS, and MAMIE G. EATON, Defendants

To the Honorable the Judges of the United States District Court for the Southern District of Florida:

Now comes Atlantic Coast Line Railroad Company, and humbly complaining, brings this, its Bill of Equity, against E. S. Matthews, A. S. Wells and Mamie G. Eaton, who are the Railroad Commissioners of the State of Florida, and respectfully avers:

1st. Complainant is a corporation, created and existing under the laws of the State of Virginia, a citizens of the State of Virginia, doing business as a common carrier by railroad in the State of Florida, pursuant to the laws of Florida.

2nd. The Defendants, E. S. Matthews, A. S. Wells and Mamie G. Eaton, are residents and citizens of the State of Florida (the said Wells residing in Leon County, the said Matthews in Bradford County in the Southern District of [fol. 158] the State of Florida and the said Eaton in Jefferson County). They are the sole members of the Railroad Commission of the State of Florida.

3rd. The said defendants who are the Railroad Commissioners of the State of Florida, purporting to act for the State of Florida, caused a Bill to be filed against the Atlantic Coast Line, this complainant, in the Circuit Court of Duval County, Florida, in chancery, seeking to restrain and enjoin complainant enforcing or complying with a certain order of the Interstate Commerce Commission dated August 2nd, 1928 in case # 18364, before said Commission, being entitled Georgia Public Service Commission vs. Atlantic

Coast Line Railroad Company, by which said order said Commission ordered and directed the Atlantic Coast Line Railroad Company to put into effect in the State of Florida certain rates on intra-state movement from points on the Atlantic Coast Line Railroad Company to points on the Atlantic Coast Line Railroad Company for the transportation of logs, except Walnut, Cherry and Cedar, in car loads minimum weight 40,000 pounds in the intra-state commerce and from enforcing or complying with the filings made by Atlantic Coast Line Railroad Company with the Interstate Commerce Commission in pursuance of the said order of the Interstate Commerce Commission and in carrying out the same and to enjoin and restrain this complainant from demanding charges or collecting on or after February 8, 1929 any rate or charges higher than those specified in the State of Florida intra-state scale described in the said Bill set out in the order of the Florida Railroad Commissioners described in said cause.

[fol. 159] 4th. Complainant filed in the Circuit Court of Duval County, Florida its petition and bond for the removal of said cause in the Circuit Court Duval County, Florida to the District Court of the United States for the Southern District of Florida and presented said petition to the Judge of said court, who refused to enter an order removing said cause to said District Court and entered an order retaining jurisdiction thereof. After the filing of said petition and bond for removal and the entry of said order declining removal the said Circuit Court of Duval County, Florida proceeded to hear said cause and entered therein a restraining order restraining this complainant from applying or enforcing or putting into effect the said order of the Interstate Commerce Commission or the said filings which it has made with said Interstate Commerce Commission as hereinbefore described, and from demanding, charging or collecting after February 8th, 1929 any rate or charges higher than those specified in the order of said Florida Railroad Commissioners, a copy of which is hereto attached as Exhibit # 1. The said order of the Circuit Court of Duval County, Florida was made without jurisdiction of the subject matter, was made after the filing of said petition and bond for removal in said Circuit Court of Duval County, Florida and the consequent removal of

said cause therefrom. Complainant has filed in the office of the Clerk of this Honorable Court a certified transcript of the record in said cause in the Circuit Court of Duval County, Florida.

[fol. 160] 5th. This petition is brought in aid of the jurisdiction of this Honorable Court, which jurisdiction is being infringed upon and overstepped by the action of the said Circuit Court of Duval County, Florida in proceeding with the hearing of said cause after the removal thereof to this Honorable Court and the entering therein of said order restraining this complainant as aforesaid.

Wherefore, waiving discovery, complainant prays:

1st. That subpœna do issue from this Honorable Court, directed to said defendants, requiring them to be and appear in this Honorable Court and plead therein.

2nd. That said defendants be restrained instanter from proceeding further in said Circuit Court of Duval County, Florida in said cause which has been removed as aforesaid to this Honorable Court and restrained from enforcing the order passed by said Circuit Court of Duval County, Florida and that said order be declared to be null and void.

3rd. That a rule be issued by this Honorable Court requiring the defendants to show cause why an injunction should not issue enjoining them from so proceeding until final action of this court and that upon final hearing in this Court a permanent injunction do issue so enjoining said defendants. That your complainant will have such other and further relief as in the premises seem proper.

And your complainant will ever pray.

Atlantic Coast Line Railroad Company, by —— ——.

[fol. 161] EXHIBIT No. 1

BEFORE THE RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA

Order No. 979

Changes in Intrastate Rates on Logs, Except Walnut, Cherry and Cedar, from and to Certain Points in the Northern Part of Florida Pursuant to Decision of Federal Court

Issued January 30, 1929. Effective January 30, 1929

1. This order is made in view of impending changes in certain intrastate rates on logs in carloads from and to certain points on Atlantic Coast Line Railroad within the State of Florida, which changes in rates have been filed with the Interstate Commerce Commission in the following schedules to become effective on February 8, 1929:

Agent Glenn's Southern Lumber Tariff, I. C. C. A-659, Supplements 10, 12, 13, 15 and 16;

Agent Glenn's Port Lumber Tariff, I. C. C. A-647, Supplements 8, 9, 11, 13 and 14;

Atlantic Coast Line Railroad Company's Florida Local Tariff No. 20, I. C. C. B-2466, Supplements 4, 5, 6 and 7,

including specific items which purport to be issued in compliance with the orders of the Interstate Commerce Commission in its Docket No. 18364. The purpose of this order is to amend the Florida intrastate rates to conform to the orders of the Interstate Commerce Commission in Docket 18364 as construed and defined by the District Court of the United States for the Northern District of Georgia, Atlanta Division, in equity, in its opinion dated January 17, 1929.

[fol. 162] 2. Whereas the said schedules would have the effect of increasing the rates on logs of various kinds and other various description between points on the Atlantic Coast Line Railroad throughout the entire state of Florida without submitting the proposed increased rates to the Railroad Commissioners and receiving their approval as provided in General Rule No. 7, in Section 1 of the Rules and

Regulations of the Railroad Commissioners of the State of Florida and without a determination of such submission or application by the Railroad Commissioners as provided in Section 6730 of the Compiled General Statutes and Section 4644 of the Revised General Statutes of 1920, which said submission, application, approval and determination must be procured before any increases or changes can lawfully be made in any existing intrastate rates or charges for transportation subject to the jurisdiction of the Railroad Commissioners of Florida.

3. Whereas the said tariffs and schedules in so far as they name increased rates on logs, or cancel existing rates on logs of various kinds and descriptions including veneer blocks or bolts namely logs less than six feet in length, between points thruout the state of Florida on the lines of the Atlantic Coast Line Railroad Company purport to be issued in compliance with orders of the Interstate Commerce Commission in its Docket No. 18364, Georgia P. S. Commission v. A. C. L. R. R. Co. 146 I. C. C. 717;

4. Whereas the District Court of the United States for the Northern District of Georgia, Atlanta Division, in equity, in its opinion dated January 17, 1929, has construed and defined, for the purpose of rendering valid, the said order of the Interstate Commerce Commission in the said [fol. 163] Docket Number 18364 as being limited in its territorial scope in so far as it prescribes intrastate rates on logs to those rates which apply on logs except walnut, cherry and cedar from points on Atlantic Coast Line Railroad's lines in Florida north of and including Jacksonville, Gainesville, Butnett's Lake and High Springs, in one direction north bound for distances not in excess of 170 miles; and whereas the said schedules above named in Paragraph 1 hereof are not limited or restricted in accordance with the said special Federal Court's construction and definition of the said order of the Interstate Commerce Commission in its Docket No. 18364; and

5. Whereas it is deemed necessary in the public interests that the Railroad Commissioners of the State of Florida define the extent, if any, to which the intrastate rates on

logs in Florida will or may be changed on February 8, 1929 by virtue of the filing and publishing of the tariffs and schedules named in Paragraph 1 hereof with the Interstate Commerce Commission;

6. It is hereby ordered that the present intrastate rates on logs of all kinds and descriptions including veneer blocks, bolts, or "short" logs not over 6 feet in length which are in effect and lawfully published as required under the laws of the State of Florida and the regulations of the Railroad Commissioners of the State of Florida on the date of this Order shall remain in full force and effect on and after February 8, 1929 until further order of the said Railroad Commissioners of the State of Florida; notwithstanding the changes proposed to become effective on February 8, 1929 in the schedules and tariffs named in Paragraph 1 hereof; except that, so long as the said decision of the said Federal Court shall or may remain in effect and unreversed, [fol. 164] the said schedules and tariffs will, under authority of the Interstate Commerce Commission have the effect of changing and increasing only and solely the intrastate rates under the following tariff description: "Logs, except cedar, cherry and walnut logs, carload minimum weight 40,000 pounds* for distances not exceeding 170 miles, only in one direction namely north bound to destinations in Florida on the direct short line routes of the Atlantic Coast Line Railroad from the list of stations hereinafter named on the lines extending from High Springs, Florida, thru Baker's Hill, Florida, to and beyond DuPont, Georgia, and on the line extending northward from Gainesville, Florida, thru Burnett's Lake and thru Jacksonville to and beyond Folkston, Georgia, viz.:

Points of Origin

Boulogne, Andres, Hilliard, Dyal, Callahan, Ratliff, Cary Dinsmore, Pickett, Jacksonville;

Baker's Mill, Jasper, Marion, Sewanee, Rixford, Live Oak, Padlock, Pine Mount, McAlpin, O'Brien, Branford, Harvard & Groover, Thompson's Spur, Hildreths, Fort White, High Springs;

(* This description does not include "logs not over six feet in length.")

Herlong, Shelton, Columbia, Lake City;
East Alachua, Burnett's Lake;
Hague, Gracys, Paradise, T. & J. Crossing, Gainesville;
Florida Transfer, Valdosta Crossing, Cambon, Deeville, Baldwin, Mattox, McPherson, La Buena, Stockert, Manning, Sapp, Harrah, Ellarbee, Raiford, Johnstown, Lake Butler, Townsend's Still, Putnam, Dukes, Munich, Worthington Springs, Santa Fe, Haynesworth, Burnett's Lake and Alachua.

(NOTE.—These stations are named in the Glenn Tariff, I. C. C. A-659, page 414, note A.)

The jurisdiction of the Interstate Commerce Commission over the rates named in the exception above described has [fol. 165] been upheld under the decision of the Federal Court, thus superseding the laws of the State of Florida and the regulations of the Railroad Commissioners of the State of Florida.

7. Ordered further that counsel for the Railroad Commissioners for the State of Florida be and is hereby authorized to preserve the existing intrastate rates on logs of all kinds and descriptions and the rates on veneer blocks, bolts or short logs, which are lawfully in effect between all points in the State of Florida, so that the same shall remain in full force and effect on and after February 8, 1929, notwithstanding the filing of the tariffs and schedules named in paragraph 1 hereof with the exception of the intrastate rates on logs except cherry, walnut and cedar from points specified in paragraph 6 hereof as prescribed by the Interstate Commerce Commission and upheld by the decision of the Federal Court as described in paragraph 6.

8. Done and ordered by the Railroad Commissioners of the State of Florida in session at their office in the City of Tallahassee, Florida, this 30th day of January, 1929.

Railroad Commissioners of the State of Florida.
A. S. Wells, Chairman. (Signed) A. S. Wells.
(Seal.)

[fol. 166] STATE OF FLORIDA,
County of Duval, ss:

Before me, the undersigned Notary Public, duly authorized to administer oaths in said State and County per-

sonally appeared —— ——, who, being first duly sworn, deposes and says on oath that he is — of the Atlantic Coast Line Railroad Company, the complainant herein and that the facts herein set out are true.

—— ——.

Sworn to and subscribed before me this — day of February, 1929. —— ——, Notary Public, State of Florida at Large. My commission expires —— —, ——.

]fol. 167[IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA

In Equity. No. —

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant

vs.

E. S. MATTHEWS, A. S. WELLS, and MAMIE G. EATON, Defendants

Now comes Atlantic Coast Line Railroad Company, and, with leave of Court previously obtained, amends its bill filed in the above stated cause by adding thereto the following:

I

On February 7, 1929 the Interstate Commerce Commission made and entered an order in the aforesaid cause No. 18364 pending before it and in said order directed and stated that the order originally passed by it in said cause on August 2, 1929, making of force certain rates therein stated on the transportation of logs in intra-state commerce in the State of Florida as amended February 5, 1929, is now of full force and effect on all lines of Atlantic Coast Line Railroad Company throughout the whole of the State of Florida, in substance stating that in order to clarify the situation the order as previously amended shall apply within and throughout the entire State of Florida without exception.

2

The said orders of the Interstate Commerce Commission dated August 2, 1928, February 5, 1929 and February 7,

1929 were made and entered upon and after full consideration of the evidence before it and such evidence fully supported and authorized the making of all of said orders.

Atlantic Coast Line Railroad Co., by W. E. Kay, Alston, Alston, Foster & Moise, Its Attorneys. W. E. Kay, E. W. Moise, of Counsel.

[fol. 168] FLORIDA,
Dade County:

Personally appeared before me the undersigned E. W. Moise who being duly sworn, deposed and said that he is of counsel for Atlantic Coast Line Railroad Company, the above named complainant, and that the facts stated in the foregoing amendment are true to the best of his knowledge, information, and belief.

E. W. Moise.

Sworn to and subscribed before me this February 8, 1929. Della Sanders, Notary Public, State of Florida at Large. My commission expires Oct. 11, 1932. (Notarial Seal.)

The foregoing amendment allowed. This Feb. 8, 1929.
Wm. B. Sheppard, U. S. Judge.

[fol. 169] IN THE DISTRICT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF FLORIDA

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

v.

E. S. MATTHEWS, A. S. WELLS, and MAMIE G. EATON, Defendants

Motion to Dismiss

Now comes the State of Florida, acting by and through A. S. Wells, E. S. Matthews and Mamie G. Eaton, Railroad Commissioners of the State of Florida, by T. T. Turnbull, special counsel designated by them, joined by Fred H. Davis, Attorney General of the State of Florida, and moves to dismiss the bill of complaint as amended filed in this

cause, and for matters of law to be argued, specifies the following:

1. For said named defendants are sued in their official capacity as Railroad Commissioners, and the State of Florida is the proper and only party defendant necessary.

2. There is no equity in said bill.

3. This court has no jurisdiction over the defendant herein.

4. That said bill purports to be ancillary to the suit of State of Florida v. Atlantic Coast Line Railroad Company, now pending in the Circuit Court of Duval County, Florida, No. 23449 E, and the State of Florida is not a party hereto.

5. That said bill attempts to establish a diversity of citizenship by suing the members of the Railroad Commis-[fol. 170] sion individually, and such members are not individually responsible but act solely and only in an official capacity for and on behalf of the State of Florida.

6. That said bill is an attempt to enjoin the prosecution of a pending suit in the Circuit Court of Duval County, Florida, contrary to Section 265 of the Judicial Code.

7. That it affirmatively appears from said bill that the same attempts to enjoin the prosecution of a pending suit in Duval County, Florida, and set aside and declare null and void an injunction granted in such suit where the matters and things involved in said suit are purely and exclusively within the jurisdiction of the Circuit Court of Duval County, Florida, and over which this court has no jurisdiction.

8. It affirmatively appears that said bill is an attempt to enjoin a state court injunction, the subject matter of which this court never had jurisdiction.

A. S. Wells, E. S. Matthews, and Mamie G. Eaton, Railroad Commissioners, State of Florida, by Theo. T. Turnbull, Special Counsel Designated by them. Fred H. Davis, Attorney General.

[fol. 171] IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF FLORIDA

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

E. S. MATTHEWS, A. S. WELLS, and MAMIE G. EATON, Defendants

Answer

Now comes the defendants, and now and at all times here after saving to themselves all benefit or advantage of exceptions and imperfections to the said bill of complaint as amended contained, for answer thereto, or to as much thereof as is necessary, answering say:

1. These defendants admit the allegations contained in paragraph 1 of said bill of complaint.

2. These defendants admit the allegations contained in paragraph 2 of said bill of complaint.

3. These defendants deny the allegations contained in paragraph 3 of said bill of complaint, each and every, and demand strict proof thereof, and on the contrary allege: that the suit brought in the Circuit Court of Duval County, Florida was filed by the State of Florida, acting by and thru these defendants as Railroad Commissioners of the State of Florida; that these defendants were not individually parties to said Duval County suit. That said Duval County suit, brought against the complainant herein, did not seek to restrain and enjoin the Complainant from enforcing or complying with an order of the Interstate Commerce Commission, dated August 2, 1928 in Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company, Docket #18364, but on the contrary said Duval County suit was brought to enjoin the complainant herein from demanding, charging or collecting and rates or charges for the transportation of logs of various kinds, higher than the presently existing Florida Intrastate rates as modified by the said order of the Interstate Commerce Commission in Docket #18364, which said order was limited and construed by the United States District Court

in and for the Northern District of Georgia, Atlanta Division, in the Case of State of Florida vs United States of America and Interstate Commerce Commission, decided January 17, 1920. That after said United States District Court opinion was handed down, these defendants in their official capacity as Railroad Commissioners for the State of Florida, and in accordance with the duty imposed upon them by law and in order to make the Florida Intrastate rates on said logs the same as those set forth in the order of the Interstate Commerce Commission, as the same was [fol. 172] construed and limited by said Federal Court, made and entered its Order No. 979 whereby the rates on logs as specified therein were made to conform to the order of the Interstate Commerce Commission's order. That a copy of said order is attached to the bill of Complaint herein and reference thereto is hereby prayed and said order is made a part hereof as if specifically set forth herein.

4. Answering paragraph 4, these defendants admit that the complainant filed, in the Circuit Court of Duval County, Florida, its petition and bond for the removal of said Circuit Court suit to the District Court in and for the Southern District of Florida, and presented said petition and bond to the Judge of said Court who refused to enter an order removing said cause but entered and order retaining jurisdiction thereof. But these defendants deny that the Circuit Court of Duval County, upon proceeding to hear said State court suit, entered an order restraining the Complainant herein from applying or enforcing the order of the I. C. C. in Docket #18364, but, on the contrary say that the Circuit Court of Duval County entered an order enjoining the complainant herein from charging, demanding or collecting any rates for the transportation of logs of various kinds, higher than the presently existing rates as the same were modified and raised by the order of the I. C. C. in #18364 and con-trued by said Federal Court and as the said rates were made to conform to the I. C. C. order by these defendants in their official order No. 979. That a copy of said order of injunction made and entered by the Circuit Court of Duval County, Florida is made a part hereof as Exhibit "A" as if specifically set forth herein and reference thereto is hereby prayed.

5. These defendants deny the allegations contained in paragraph 5 of said bill of complaint and on the contrary allege that the Circuit Court of Duval County, Florida not only had jurisdiction of the suit brought by the State of Florida against the Complainant herein, but such Court likewise had sole and exclusive jurisdiction thereof, and that said suit was not a removable cause within the meaning of Section 24 of the Judicial Code.

6. And further answering said Bill of complaint these defendants allege that the Florida Railroad Commission gave full force and effect in and by its order No. 979, and complied with the order of the I. C. C. in Georgia Public Service Commission vs Atlantic Coast Line Railroad Company, Docket #18364, both as construed and limited by the District Court of the United States in State of Florida vs United States and I. C. C. and as fully and completely appears upon the face of said order entered in #18364.

And these defendants having completely answered said bill, pray to be dismissed with their costs in this behalf most wrongfully sustained.

A. S. Wells, E. S. Matthews, and Mamie G. Eaton, Railroad Commissioners of Florida, by Theo. T. Turnbull, Special Counsel Designated by Them. Fred H. Davis, Attorney General.

[fol. 173] IN THE CIRCUIT COURT IN AND FOR DUVAL COUNTY, FLORIDA

In Chancery

THE STATE OF FLORIDA, Complainant,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Defendant

This cause came on to be heard upon application for temporary injunction after due notice and upon the affidavits in support thereof and upon consideration the court being advised in the premises, it is, thereupon, ordered, adjudged and decreed:

1. That the defendant Atlantic Coast Line Railroad Company, its agents, servants, employees and attorneys be and

the same are hereby each jointly and severally restrained and enjoined forthwith from demanding, charging, or collecting on or after February 8, 1929, any rates or charges higher than those in the scale of rates hereinafter set forth in this paragraph numbered 1 which are specified for the transportation of logs (other than cedar logs and other than logs not over 6 feet in length) in carload quantities moving intrastate in Florida for distances up to but not exceeding 170 miles from any point of origin, on its lines in Florida to any destination on its lines in Florida except for transportation north bound from points of origin north of and including Burnett's Lake, Florida, situated upon the line of said defendant, which extends northwardly from said Burnett's Lake, Florida, through High Springs, Florida, through Baker's Mill, Florida to and beyond Dupont, Georgia, and except for transportation north bound from points of origin north of and including Gainesville, Florida, upon the line of the defendant which extends northwardly from Gainesville, Florida, through Burnett's Lake, Florida, and through Jacksonville, Florida, to and beyond Folkston, Georgia; said scale of rates is as follows:

[fol. 174] Logs, carload, except cedar logs, per car 50,000 pounds, excess in proportion, cars to be loaded and unloaded by owner and not to be unloaded on the railroad right of way:

From A. C. L. R. R. Stations in Florida to A. C. L. R. R. Stations in Florida

For distances of	
40 miles and under	$9.55 per car
60 miles and over 40 miles	10.50 " "
90 miles and over 60 miles	11.50 " "
100 miles and over 90 miles	13.00 " "
110 miles and over 100 miles	14.00 " "
130 miles and over 110 miles	16.00 " "
160 miles and over 130 miles	17.00 " "
170 miles and over 160 miles	18.50 " "

2. That the defendant Atlantic Coast Line Railroad Company, its agents, servants, employees and attorneys be and the same are hereby each jointly and severally restrained and enjoined forthwith from demanding, charging, or col-

lecting, on or after February 8th, 1929, any rates or charges higher than those specified in the scale of rates hereinafter specified in this paragraph numbered 2 for the transportation of hickory, ash, oak, pine, gum and cypress logs not over 6 feet in length in carload quantities moving intrastate in Florida between any points on the line of said defendant in Florida, said scale of rates in this paragraph numbered 2 is as follows: Logs, viz., ash, gum, hickory, oak, pine and cypress, not over 6 feet in length. per car forth thousand pounds excess in proportion.

Distances	Rate
5 miles and under	855 cents
10 miles and over 5	855 cents
20 miles and over 10	950 cents
30 miles and over 20	1100 cents
40 miles and over 30	1150 cents
50 miles and over 40	1300 cents
60 miles and over 50	1400 cents
70 miles and over 60	1500 cents
80 miles and over 70	1600 cents
90 miles and over 80	1700 cents
100 miles and over 90	1800 cents
110 miles and over 100	1850 cents
120 miles and over 110	2000 cents
125 miles and over 120	2050 cents
140 miles and over 125	2150 cents
[fol. 175]	
150 miles and over 140	2200 cents
160 miles and over 150	2300 cents
170 miles and over 150	2500 cents
200 miles and over 160	2500 cents
220 miles and over 200	2600 cents
240 miles and over 220	2700 cents
260 miles and over 240	2750 cents
280 miles and over 250	2850 cents
290 miles and over 280	2900 cents
320 miles and over 290	2950 cents
330 miles and over 320	3050 cents
340 miles and over 330	3100 cents
360 miles and over 340	3150 cents
370 miles and over 360	3200 cents
380 miles and over 370	3300 cents
400 miles and over 380	3350 cents

3. That the said injunctions and restraining orders hereinabove set forth each and every shall be and remain in force and effect pending this suit and until the further order of this court.

Done and ordered at Jacksonville, in Duval County, Florida, in Chambers, this February 4th, A. D. 1929.

(Signed) DeWit T. Gray, Circuit Judge.

[fol. 176] IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF FLORIDA

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

E. S. MATTHEWS, A. S. WELLS, and MAMIE G. EATON, Defendants

Order Denying Injunction and Dismissing Bill

This cause coming on to be heard this day upon the complainant's Bill of Complaint, and amendment to Complainant's bill the Complainant's motion for an injunction and restraining order as prayed for in the Complainant's Bill, the Defendant's Answer, and upon the Defendant's Motion to Dismiss said Bill of Complaint and having been argued by counsel for the respective parties and having been submitted for consideration and determination by the Court, and the Court having fully heard the argument of counsel for the respective parties and having seen and inspected the transcript of record in that certain cause in equity referred to in Complainant's Bill of Complaint as having been instituted in the Circuit Court of Duval County, Florida, upon the 31st day of January 1929, wherein the State of Florida is Complainant and Atlantic Coast Line Railroad Company is Defendant as to which the injunction of this Court is sought to restrain the Defendants in this cause from further proceedings in said proceedings in said state court and the Court being now advised of its decision in the premises, and it appearing to the Court from its examination and consideration of said transcript of record of the cause pend-

[fol. 177] ing in the state court of the state of Florida that said state court has full jurisdiction of the parties and sub-

ject matter of such suit in the state court and that said cause pending in the state court is not a cause removable to this Court under the Constitution or any law of the United States and that the said state court has lawfully denied a petition seeking to remove the same to this court and that the said Bill of Complaint is wholly without equity.

It is thereupon considered, ordered, adjudged, and decreed that the Complainant's motion for injunction and restraining order as prayed for in the Bill of Complaint be and the same is hereby denied and that said Bill of Complaint be and the same is hereby dismissed.

Done and ordered at Miami, Florida, in said district, this seventh day of February, A. D. 1929, in chambers.

Wm. B. Shepard, District Judge.

[fol. 178] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPLICATION FOR INJUNCTION—Filed Mar. 1, 1929

To the Attorney General of the United States, the Interstate Commerce Commission, the Georgia Public Service Commission:

You will hereby take notice that the complainant herein will present to the Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division, at New Orleans, Louisiana. an application for a temporary or interlocutory injunction or a temporary stay or suspension, restraining the United States of America and the Interstate Commerce Commission from enforcing a part of that certain order entered by the Interstate Commerce Commission on the 2nd day of August, 1928, in Docket No. 18364, and the amendment thereto of February 7, 1929, all of which is described in the original bill of complaint herein and in the supplemental bill of complaint in the nature of a Bill of Review and in the Petition for Rehearing, copies of which have been served upon you; and

that said application will be heard at New Orleans, Louisiana, at 10 o'clock, A. M. on the 7th day of March, 1929.
[fol. 179] Dated this 23rd day of February, 1929.

Fred H. Davis, Attorney General of the State of Florida; T. T. Turnbull, Special Counsel for Florida Railroad Commission, Solicitors for Complainant.

Received copy of this notice and accept service thereof this 26 day of February, A. D., 1929.

Elmer B. Collins, Special Assistant to the Attorney General, for the Attorney General of the United States. J. Stanley Payne, for the Interstate Commerce Commission. Jas. A. Perry, Chairman, for the Georgia Public Service Commission.

This March 1, 1929.

[fol. 180] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ENTERTAINING PETITION FOR REHEARING AND TO SHOW CAUSE—Filed Mar. 1, 1929

This cause came on to be heard upon petition for a rehearing herewith presented, and it appearing to the Court that new and additional facts and matters have developed since this Court's decision and final decree entered herein on January 17, A. D. 1929, and it further appearing that the term of this Court at which said opinion and decree was entered has not expired, upon consideration,

It is, therefore, ordered and decreed:

1. That this Court does hereby entertain said Petition for rehearing;

2. That the defendants, the United States of America and Interstate Commerce Commission, and the intervenor, Georgia Public Service Commission, and each of them, be and they are each hereby ordered and required to show cause, if they can, on the 7th day of March, A. D. 1929, at New Orleans, La.,

(a) Why the decree of this Court heretofore entered January 17, 1929, should not be opened, vacated and set aside.

(b) Why a rehearing should not be granted herein.

(c) Why the complainant should not be permitted and allowed to file herein its supplemental bill in the nature of a bill of review tendered and presented with said Petition for rehearing.

(d) Why the prayers of said Petition for rehearing, each and every, should not be granted.

[fol. 181] 3. That a copy of this Order and said Petition for rehearing be served upon the defendants, the United States of America and Interstate Commerce Commission, and the intervenow, Georgia Public Service Commission.

Done and ordered this 21 day of February, A. D. 1929.

R. W. Walker, United States Circuit Judge. Ben C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

Recd. in Clerk's office Feb. 21, 1929.

Received copy of the foregoing order and likewise copies of the Petition for Rehearing and the Supplemental Bill mentioned therein and accept service thereof this the 26 day of February, A. D. 1929.

Elmer B. Collins, Special Assistant to the Attorney General, for the United States of America. J. Stanley Payne, for the Interstate Commerce Commission. Georgia Public Service Commission, by Jas. A. Perry, Chairman.

This Mch. 1, 1929.

[fol. 182] IN UNITED STATES DISTRICT COURT

[Title omitted]

RETURN TO RULE TO SHOW CAUSE

Now comes the United States of America, defendant in the above entitled proceeding, and for its Return to Rule to Show Cause issued against it herein, says:

United States assents to (a) opening of the decree of this Court entered herein on January 17, 1929; (b) grant-

ing of a rehearing herein; (c) the filing by Petitioner of its supplemental bill in the nature of a bill of review presented with its petition for rehearing.

United States further says, in response to the Rule to Show Cause, that in so far as the Court's said final decree herein dismissed Petitioner's Original Bill, said decree is just, proper and correct and, therefore, should be affirmed upon rehearing, notwithstanding the new matters and things alleged in the Supplemental Bill. But, inasmuch as this Court, in dismissing said Original Bill, so construed the order of the Interstate Commerce Commission issued August 2, 1928, as to restrict and limit the state-wide scope and effect of said order, as affecting intrastate rates on logs transported by the Atlantic Coast Line Railroad Company, and thus, in effect, annulled said order [fol. 183] to the extent of such restriction and limitation, United States prays that the Court, in reconsidering this cause, give full effect to said order by holding that it validly and lawfully requires said intrastate rates to be increased from and to all points on the Atlantic Coast Line Railroad Company's lines within and throughout the State of Florida, and, thereupon, affirm its decree dismissing said original Bill.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

Recd. in Clerk's Office, March 27, 1929.

[fol. 184] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES TO THE SUPPLEMENTAL BILL OF COMPLAINT

United States, for answer to the supplemental bill filed herein against it says:

I

United States admits the allegations of paragraphs I, II, III and IV.

II

United States has not sufficient knowledge or information to form a belief concerning the allegations of paragraphs V and VI and, therefore, neither admits nor denies those allegations.

III

Answering paragraph VII United States admits that the Interstate Commerce Commission issued the order therein described on February 15, 1929, in which it excepted from its order of August 2, 1928, the following, "ash, gum, hickory, oak, pine and cypress logs not over six feet in length." As to the other allegations made in said paragraph United States has not sufficient knowledge or information to form a belief and, therefore, neither admits nor denies them.

[fol. 185] IV

United States has not sufficient knowledge or information to form a belief concerning the allegations in paragraphs VIII, IX, XI and XII, and as to them, therefore, it neither admits nor denies.

V

For answer to paragraph X United States says that the Interstate Commerce Commission on February 7, 1929, issued the order therein referred to and alleges that said order is in the following words:

Upon further consideration of our order heretofore entered in this proceeding on August 2, 1928, as amended by orders entered August 27th, October 19th, and November 30th, 1928, and February 5, 1929, and because of doubt that has arisen as to the territorial limits intended to be covered by that portion of said order of August 2, 1928, as amended, prescribing intrastate rates within the State of Florida:

It is ordered, That the said order of August 2, 1928, as amended, be, and it is hereby, changed in language for the purpose of clarification as follows: In the fourth paragraph of said order of August 2, 1928, substitute for "within

the State of Florida" the following "within and throughout the entire State of Florida, without exception."

VI

United States, for answer to paragraph XIV (the copy of supplemental bill served upon the United States contains no paragraph numbered XIII), says it has no information, knowledge or belief as to whether, when, or how the ancillary Bill mentioned in paragraph XI or the Bill mentioned in paragraph XII were presented to the court alleged, or to any court.

Further answering said paragraph XIV United States says that the Interstate Commerce Commission on February 7, 1929, did make and issue the order mentioned in that paragraph which said order is quoted in paragraph V of this answer.

And for a further answer to paragraph XIV United States says that no further "investigation or proceeding whatsoever" was necessary or required by law or otherwise, preceding the issuance of the order of February 7, 1929, and that said order was merely a restatement and reiteration by the Interstate Commerce Commission of the requirement contained in its order entered August 2, 1928, [fol. 186] directing the Atlantic Coast Line Railroad Company as follows:

It is further ordered, That said defendant be, and it is hereby, notified and required to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain rates for the transportation of logs, except walnut, cherry, and cedar, in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which shall be the same as those prescribed in the next preceding paragraph hereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia.

United States has not sufficient knowledge or information to form a belief concerning the remaining allegations of

paragraph XIV and therefore neither admits nor denies them.

VII

United States, answering paragraph XV, denies that the purpose, intent and effect of the order issued February 7, 1929, was or is "to refute and deny the construction and limitation placed upon the said order of August 2, 1928, by this Court;" and alleges that the purpose and intent of the order issued February 7, 1929, was to reiterate and restate beyond possible misconception that by its order of August 2, 1928, the Interstate Commerce Commission intended to and did require the Atlantic Coast Line Railroad Company to establish, publish and maintain the intrastate rates in question throughout the State of Florida and not merely from and to intrastate points north of and including Jacksonville, Gainesville, Burnett's Lake, and High Spring.

VIII

United States denies each and every allegation made and contained in paragraph XVI. United States alleges, in further answer to paragraph XVI, that the order of August 2, 1928, as amended, was issued by the Interstate Commerce Commission upon complaint alleging, among other things, violations of Sections 3 and 13 of the Interstate Commerce Act, and upon its finding of fact made and entered upon the record before it that the intrastate rates complained of resulted in undue preference and advantage of shippers of intrastate traffic within the State of Florida, [fol. 187] in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce; and that the power thus exercised by the Interstate Commerce Commission in making said order is expressly granted to it by Sections 3 (1), 13 (4) and 15 (1) of said Act and does not constitute an unconstitutional or other unlawful invasion of the sovereign rights of the State of Florida.

IX

Except as herein expressly admitted, United States denies the truth of each and every allegation and conclusion

contained in the supplemental bill in so far as they conflict either with the allegations herein, or with the statements or conclusions of fact included in said report and order of August 2, 1928.

Wherefore, having fully answered, defendant prays that the supplemental bill be dismissed at the cost of the plaintiffs and for such other and further order as may be appropriate.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

[fol 188] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

Recd. in Clerk's Office March 27, 1929.

[fol. 189] In United States District Court

[Title omitted]

Order Granting Rehearing, etc.—Mar. 7, 1929

The above numbered and entitled causes came on this day to be heard upon the petition filed on behalf of the complainants for a rehearing herein and for leave to file a supplemental bill of complaint, and also, upon the motion of the Atlantic Coast Line Railroad Company for leave to intervene;

And, upon consideration thereof,

It is ordered that the petition of the complainants be granted, that the causes be re-opened and that complainants are permitted to file their supplemental bill of complaint herein;

It is further ordered that the motion of the Atlantic Coast Line Railroad Company be granted, and accordingly that the petition of intervention of said Atlantic Coast Line Railroad Company be filed of record.

[fol. 190] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER REFERRING INTERVENTION TO TRIAL ON MERITS—Mar. 7, 1929

Whereupon, after hearing argument of solicitors for the parties in interest, and on consideration thereof, it is ordered that the intervention herein, be referred to the trial of this case on the merits.

[fols. 191 & 192] Minute entries of argument and submission omitted in printing.

[fol. 193] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION TO INTERVENE BY ATLANTIC COAST LINE R. R. Co.

To the Honorable the Judges of the United States District Court for the Northern District of Georgia:

Now comes the Atlantic Coast Line Railroad Company, and respectfully represents unto this Honorable Court as follows:

(1) It is interested in the above entitled proceeding. It was the respondent in cause No. 18364 before the Interstate Commerce Commission, in which the Georgia Public Service Commission was the complainant. It is affected by the order of the Interstate Commerce Commission made in said cause and will be affected by any order which this court may enter thereunder.

(2) Wherefore, petitioner prays that it be allowed to intervene in this cause.

Atlantic Coast Line Railroad Company, by F. B. Grier, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Its Atty.

The foregoing petition is granted and the Atlantic Coast Line Railroad Company is allowed to intervene in this cause.

This 7 day of March, 1929.

Sam'l H. Sibley, U. S. Judge.

Received in Clerk's Office March 27, 1929.

[fol. 194] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY, AS TO REHEARING

To the Honorable the Judges of the District Court for the Northern District of Georgia:

Now comes the Atlantic Coast Line Railroad Company, the Intervenor in the above mentioned cause, and before pleading to the merits of this case respectfully represents unto this court as follows:

1

The supplemental pleadings in this case show that on the 30th day of January, 1929, the Railroad Commissioners of Florida cause to be entered an order (No. 979) wherein and whereby they undertook to declare that all then existing Florida intrastate rates for the transportation of logs of the kind involved in this cause should continue in force and effect throughout the State, except to the very limited extent set out therein. The said order No. 979 purports to be effective over all the lines of the Atlantic Coast Line Railroad Company in the State of Florida for the transporta-[fol. 195] tion of logs, except cedar, moving northward in one direction from points of origin on the lines of the Atlantic Coast Line Railroad Company north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Florida for distances not exceeding 170 miles.

2

The supplemental pleadings also show that the Railroad Commissioners of Florida filed suit in the Circuit Court of Duval County, Florida, in the name of the State of Florida, wherein the Atlantic Coast Line Railroad Company has been restrained from enforcing any rates on logs in Florida except those set out in the said order No. 979 of the said Florida Railroad Commission, and that interlocutory injunction was granted thereon against the Atlantic Coast Line Railroad Company.

3

The supplemental pleadings further show that an ancillary bill was filed in connection with removal proceedings and the District Court of the United States for the Southern District of Florida denied to the Atlantic Coast Line Railroad Company an order restraining and enjoining the persons who are the Railroad Commission of Florida from enforcing the above mentioned injunction and dismissed this Intervenor's said ancillary bill.

4

The said supplemental pleadings also show that this Intervenor filed its bill in the United States District Court for the Northern District of Florida, seeking to restrain [fol. 196] by injunction the enforcement of the said order No. 979 of the Florida Railroad Commission. The said bill was filed on the ground that said order was unconstitutional in that it conflicted with the commerce clause of the Constitution of the United States and the Acts of Congress made in pursuance thereof, especially the Act of Congress known as the Act to Regulate Commerce, approved February 4, 1887, and the amendments thereto, and particularly Section 13, sub-paragraph 4 thereof. The Judge of said United States District Court refused to call together three Judges for the trial of said cause, and dismissed Intervenor's said bill.

5

Intervenor alleges that the order of the United States District Court for the Southern District of Florida, above

mentioned in the ancillary proceedings, has been appealed to the United States Circuit Court of Appeals for the Fifth Circuit, and a restraining order has been granted thereon until the further order of that Court, restraining the enforcement of the said order No. 979 and of the said order of the Circuit Court of Duval County, Florida, restraining the persons who are the Florida Railroad Commission from enforcing said order No. 979 and the said order of the Circuit Court of Duval County, Florida.

6

A motion to be allowed to file a petition for writ of mandamus has been filed by this Intervenor in the Supreme Court of the United States, seeking a writ of mandamus to the Honorable, the Judge of the United States District Court for the Northern District of Florida, and [fol. 197] to the State Court, requiring the Judge of said Court to call together two other Judges to his assistance to hear this Intervenor's said bill. The determination of Intervenor's motion has not yet been had, insofar as Intervenor is informed.

7

Intervenor alleges that this extraordinary and unusual condition has been brought about by the same complainants who are now seeking discretionary remedies from this Court, including the re-opening and final decree dismissing their bill, and also seeking discretionary relief by injunction.

8

Intervenor alleges that said order of the Florida Railroad Commission was illegal; that the order of the Circuit Court of Duval County, Florida, was illegal; and the said order of the United States District Court for the Northern District of Florida was likewise illegal, for that the said Court, presided over by one Judge, had no jurisdiction to enter the order which was entered, and which is above referred to. Nevertheless, each of said orders and judgments is being relied upon by complainants, and neither judgment has been reversed.

9

Intervenor avers that it is impracticable for this Court to give full relief in this situation while the above mentioned proceedings remain in the condition above described. If the order of the Circuit Court of Duval County, Florida, remains in force this Intervenor is enjoined, and will continue to be enjoined, from complying with any order which this Court may make in this cause, except insofar as it may happen to coincide with that [fol. 198] order. If the Florida Commission's order is in force the Interstate Commerce Commission's order cannot go into effect, except in the said limited territory. If the order of the District Court of the United States for the Northern District of Florida remains in effect this Intervenor is enjoined by final decree from putting into effect the order of the Interstate Commerce Commission, except in the limited territory as aforesaid. The complainants are thus seeking to impede the exercise of the jurisdiction of this court in the premises, unless that jurisdiction be exercised according to their conception of their rights.

10

This situation can be remedied by the act of the complainants.

11

Intervenor respectfully avers that the motion for rehearing and the supplemental pleadings of the complainants in this cause should not be considered by this court until the complainants have removed those things which embarrass this court in the determination of the subject matter.

Wherefore this Intervenor respectfully prays that this Honorable Court do not grant the petition to re-open this case or to grant a re-hearing, or to otherwise proceed therein, until the complainants shall have removed or caused to be removed the orders, judgments and decrees above referred to, or until they shall have done those things which may be required by this court, necessary to

[fol. 199] remove the conflicts of jurisdiction which has been caused by the said proceedings; and that none of the prayers of the complainant be considered unless and until the conditions referred to be released by them.

Respectfully submitted.

F. B. Grier, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Counsel for Atlantic Coast Line Railroad Company.

Received in Clerk's Office March 27, 1929.

[fol. 200] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF ATLANTIC COAST LINE RAILROAD COMPANY

Now comes the Atlantic Coast Line Railroad Company, the intervenor in the above mentioned cause, and answers the pleadings which are filed as a supplemental bill, and for answer says:

I

(a) This intervenor was the defendant in cause No. 18364 in the Interstate Commerce Commission in which the Georgia Public Service Commission was the petitioner.

(b) Intervenor owns and operates about 2,200 miles of rail line in the State of Florida; that it does business as a common carrier by railroad over its own lines in the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama. It operates about 5,100 miles of its own line of rail, and that it is engaged in interstate and intrastate common carriage by railroad.

[fol. 201] (c) Intervenor admits the filing of the bill in the United States District Court for the Northern District of Georgia, as set out in paragraph 1 of the bill in this cause. The bill itself is referred to for its contents.

(d) It is admitted that answers were filed to said bill by the United States of America and the Interstate Commerce Commission, and that the Georgia Public Service Commission intervened and filed its answer.

(e) It is admitted that two other bills were filed at the same time and in the same court. It is admitted that there was a hearing in said cause as is set out in paragraph 1 of the bill in this case and that an opinion was handed down and that a decree was rendered dismissing each of the original bills. The decree and the opinion are referred to.

II

Intervenor denies the allegations of paragraph 2 of the bill in this case and more fully answers the same hereinafter.

III

Allegations of paragraph 3 of the bill require no answer.

IV

(a) Intervenor did file prior to October 5, 1928, with the Interstate Commerce Commission its tariff described in paragraph 4, sub-division "a" of the bill in this case, the object of which was to put into effect the rates prescribed by the Interstate Commerce Commission in its order entered August 2, 1928, in its aforementioned proceedings No. [fol. 202] 18364. The said rates are now in effect. The said filing was made with the Interstate Commerce Commission in compliance with that Commission's order of August 2, 1928.

(b) This intervenor did prior to October 5, 1928, file with the Interstate Commerce Commission its tariffs, putting into effect in intrastate commerce the rates on short logs described in paragraph 4-B of the bill; the said filings have been cancelled as to such intrastate transportation on the logs described in said bill as short logs. This was done because of the order of the Commission entered in said cause on the 5th day of February, which order was to the effect that the said short logs were not within the terms of the said order of August 2, 1928.

(c) The rates on said short logs above referred to were higher than those which had theretofore appertained in Florida intrastate transportation over the lines of this intervenor.

(d) The effective dates of the new rates were postponed until February 8, 1929.

V

The allegations of paragraph V of the bill are denied except that on the 30th day of January, 1929, the Railroad Commissioners of Florida entered what they termed to be an order effective instanter which dealt with the subject matter of the transportation of logs. That action of the Florida Commissioners did not recognize that the decision, opinion or decree of this Court was the law of the land but it is and was in direct violation thereof and was in misapplication and in mis-use of the decision of this court and [fol. 203] of the Interstate Commerce Commission. This will be further dealt with hereafter. The Florida Commissioners had no power or authority to issue said writing and it was null from the beginning.

VI

The allegations of paragraph VI of the bill are denied except that the Florida Commissioners did enter a writing which they called their order No. 979, which writing this intervenor avers was not for the purpose of giving force or effect to any order of the Interstate Commerce Commission or of this Court but for the purpose of breaking down both; and if the said order No. 979 should become effective the result would be practically a complete nullification of the order of this Commission and of the said order of this Court entered on the 17th day of January, 1929. It would have left no traffic, or practically no traffic, to be affected by the order of the Interstate Commerce Commission.

VII

The allegations of paragraph VII as pleaded are denied. On the 5th day of February, 1929, the Interstate Commerce Commission issued its supplemental order, declaring, in effect, that the logs, which are sometimes referred to as short logs, were not affected by its order of August 2, 1918. Until that date there had been no official action of the Commission on the subject. When that action was taken by the Interstate Commerce Commission, intervenor immediately conformed thereto.

VIII

The allegations of paragraph VIII of the bill are denied as pleaded. It is not made the duty of the Railroad Commissioners to proceed in the name of the State of Florida [fol. 204] as is set out in said paragraph. There is a discretion conferred by statute in said Commissioners to a certain extent and in a certain way, as is mentioned in the statute. It is denied that the Railroad Commissioners of Florida proceeded in pursuance of any duty so imposed as is set out in said paragraph VIII. The Florida Commissioners did file a bill in the Circuit Court of Duval County, Florida, as is referred to in said paragraph, and this was done in their own name and in the name of the State of Florida. The purpose of said bill was to enforce the aforementioned writing of the Commission called its order No. 979, which was void from its beginning, and to thereby annul for all practical purposes the said order of the Interstate Commerce Commission.

IX

It is true that this intervenor on the 4th day of February, 1929, filed its petition and bond for the removal of said last described suit to the United States District Court for the Southern District of Florida and that the removal was denied by the State Court. Immediately thereafter this intervenor caused the record in said proceedings in the Circuit Court of Duval County, Florida, to be filed in the said United States District Court for the Southern District of Florida and thereupon the Circuit Court of Duval County, Florida completely lost jurisdiction of the said cause by the proceedings to remove, if any it every had. Notwithstanding that, the State Court did proceed and did issue an injunction restraining and enjoining this intervenor from complying with the order of the Interstate Commerce Commission. The said State Court had no jurisdiction of the said cause from the beginning because the subject matter of the suit was an effort to annul or suspend in whole or in part an order of the Interstate Commerce Commission over [fol. 205] which it never had jurisdiction and its proceedings were utterly void.

X

Allegations of this paragraph have been heretofore answered.

XI

It is admitted that an ancillary petition or bill was filed in the United States District Court for the Southern District of Florida against the members of the Railroad Commission of Florida, as is set out in paragraph XI, seeking to restrain and enjoin the members of the Railroad Commission from prosecuting the said suit in the Circuit Court of Duval County, and this intervenor did move the Court for a temporary restraining order and injunction, as is set out in said paragraph.

XII

This intervenor did on February 7, 1929, file in the United States District Court for the Northern District of Florida, its bill in which it did assert that the order of the Interstate Commerce Commission of August 2, 1928, did require it, and does require it, to demand, charge and collect for the transportation of logs of the kind mentioned in and covered by said order as construed by the order of February 5, 1929, and it further alleged that the writing called order No. 979 of the Florida Railroad Commissioners was void. Intervenor did seek a restraining order and injunction, as is set out in this paragraph. The said matter did come on for hearing before the Honorable Wm. B. Sheppard, Judge of the said District Court, on February 7, 1929.

XIII

There is no paragraph numbered XIII in said bill.

XIV

The ancillary bill referred to in paragraph XI of the bill [fol. 206] and the bill referred to in paragraph XII were presented to Hon. Wm. B. Sheppard, Judge as aforesaid, at the same time. During the progress of the hearing of the said cause and on the 7th day of February, 1929, the Inter-

state Commerce Commission issued its order amending or clarifying its order of August 2, 1928, so that the rates intrastate on logs prescribed by the said order were made to apply over all of the lines of your intervenor in the State of Florida for intrastate transportation of such logs. On February 8, 1929, and during the progress of the trial of said cause, intervenor amended its bill so as to set out said order of the Interstate Commerce Commission of February 7, 1929, and thereupon answers and motions to dismiss which were filed by the complainants in this case were made applicable to the bill as amended and the United States District Court did then deny the prayers of intervenor in both bills and did dismiss each of them. Appeals were taken on February 13, 1929, to the Honorable, the Circuit Court of Appeals for the Fifth Circuit, and on the 14th day of February, 1929, that court entered its order restraining the appellee from enforcing the order of the Circuit Court of Duval County, Florida, hereinbefore referred to, and from enforcing the aforementioned writing called order No. 979 of the Florida Railroad Commission, the District Court having refused this relief. Said restraining order is in full force and effect and it is the only thing which prevents the utmost of confusion over this subject matter and the conflict of the jurisdictions of the United States and of the State of Florida.

XV

The allegations of paragraph XV of the bill as pleaded [fol. 207] are denied. The purpose of the order of the Interstate Commerce Commission of August 2, 1928, was to fix intrastate rates for transportation over the lines of the Atlantic Coast Line Railroad Company in Florida of logs of the kind covered by the said order and the report accompanying the said order. That order was made on ample evidence which not only justified the order but required its entry.

XVI

This intervenor denies that the order of the Interstate Commerce Commission of August 2, 1928, is void for any of the reasons set forth in this paragraph of said bill, and

avers that said order of said Commission is valid and of full force and effect.

Further answering said paragraph, intervenor denies that said order of the Interstate Commerce Commission is void because of any matter or thing set out in sub-paragraphs A, B, C, D, E, F or G of the said paragraph XVI of said bill.

Further answering the supplemental bill, this intervenor says:

XVII

The order of the Interstate Commerce Commission was issued after an investigation and the taking of a great deal of evidence orally and by way of statistical data. Petition was filed by the Georgia Public Service Commission with the Interstate Commerce Commission in May, 1926, and an order was rendered on August 2, 1928. In the meantime evidence was taken before an examiner of the Commission on October 20th, 21st and 22nd, 1926, at Valdosta, Georgia. Further evidence was taken in Jacksonville, Florida, before an examiner of the Commission on January 18th, 19th, 20th, and 21st, 1927. There were 53 exhibits offered and received in evidence. There were about 30 witnesses examined. The subject was investigated with [fol. 208] great detail. Many shippers and carriers intervened in said cause and the Florida Railroad Commissioners appeared in defense of the then Florida rates which were in question.

XVIII

Ample evidence was offered and received not only to justify, but to require, the order of the Interstate Commerce Commission; which order notified and required this intervenor to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain in intrastate commerce within the State of Florida those rates which this intervenor has put into effect and is maintaining on logs, except walnut, cherry and cedar and which rates are otherwise described in the pleadings in this cause.

XIX

The evidence before the Interstate Commerce Commission showed:

(a) That the Florida Commissioners had in writing stated that the rates in Florida which were complained of were too low and were such as might be deemed confiscatory;

(b) That the rates which the Interstate Commerce Commission has ordered into effect in its order of August 2, 1928, are on substantially the same basis as the present rates under the scale prescribed by the Interstate Commerce Commission from points in South Carolina south of Columbia to Savannah, Georgia, and from South Carolina to destinations in North Carolina, and on logs from points on intervenor's line south of Charleston to Savannah;

[fol. 209] (c) That the charges per car of 50,000 pounds on logs from Live Oak, Florida, to Jacksonville, Florida, 128 miles, were $16.00, while from the same point of origin to Waycross, Georgia, 83 miles, the charges on the same logs are $35.00. This illustration is only one of many illustrations covered by the evidence as to the disparity of rates interstate and intrastate;

(d) That the rate intrastate in Florida on logs under the Florida scale known as the Cummer Scale, which was the scale under attack in this case, was not as much as one-half of the rate on the same logs moving over intervenor's line from points in Florida to points in Georgia. To illustrate; The rate on a car of 50,000 pounds from Jasper, Florida to Lake City, Florida, a distance of 69 miles, is $11.50 under the Cummer Scale, and from Jasper, Florida, to Valdosta, Georgia, a distance of 59 miles, the rate is $27.50;

(e) That the rates on logs in cars of 50,000 pounds covering interstate movements from points of origin in Florida to Georgia destinations were higher than the rates then applicable to the same transportation of the same commodity moving in the same circumstances intrastate in

Florida over the lines of this intervenor by from 46% to 233%;

(f) That a manufacturer of lumber in Georgia who would draw his logs from Florida points would be at a disadvantage in the eastern markets of about $60.00 per car of lumber as compared with the Florida producer who got his logs in Florida and moved them the same distances under the same circumstances of transportation. The said east-
[fol. 210] ern markets were desirable markets to the Florida and Georgia manufacturers;

(g) That a difference of $10.00 to $12.00 per car was a sufficient difference to keep a manufacturer of lumber thus discriminated against out of competition with the favored manufacturer;

(h) That the rates under said Cummer Scale were the lowest rates known to expert rate men for the transportation of logs anywhere in the United States;

(i) That the rates under the said Cummer Scale, that is the Florida intrastate scale complained of in said cause, are only from ⅓ to ½ of the rates on other commodities having like transportation characteristics, moving in similar circumstances, such as sand, gravel, lime, cement and brick;

(j) That the rate complained of was very much less than the rate for the same class of transportation on any other line of railroad doing business in Florida;

(k) That there are 64 saw mills along this intervenor's line in Georgia within 170 miles of Florida, and that these mills cannot compete with the Florida producer of lumber in the eastern markets because of the difference in the rates on the inbound logs, which rates were the subject of investigation in said cause;

(l) That the amount of the burden on interstate commerce made by the unduly low rates on said intrastate shipments of logs in Florida under the said Cummer Scale of rates, which were under attack in said cause, would amount to several millions of dollars:

(m) That the volume of the traffic covered by the said logs was such that the discrimination against interstate commerce would continue for many years;

[fol. 211] (n) That the difference in the rates under the Cummer Scale and in those under the properly established interstate scales applicable to logs moving over the lines of this intervenor was so great that the necessary commercial effect was to require the movement of logs in Florida to Florida manufacturing points, and to prevent the movement of said logs to Georgia manufacturing points, although the circumstances of transportation were equally as advantageous to the Georgia manufacturing points;

(o) That the effect of the rates under the Cummer Scale was to undertake to preserve this advantage to intrastate commerce at the expense of interstate commerce;

(p) The evidence showed many other kinds of discriminations which were unjust and unduly prejudicial to interstate commerce; and also showed that the discriminations above point- out were unjust, unduly prejudicial and unlawful.

XX

Intervenor alleges that the so-called order No. 979 of the Florida Commissioners, which is set out in the supplemental pleadings as Exhibit "A" thereto, was unlawful because it dealt with a subject matter over which the said Commissioners had no jurisdiction, to-wit: an order of the Interstate Commerce Commission, and it undertook to amend or annul said order in whole or in part. (The order of the Interstate Commerce Commission referred to being the one dated August 2, 1928). Also, because it undertook to make an order in conflict with the said order of the Interstate Commerce Commission, and also because it undertook to apply its own construction of the said order, which construction was in conflict with the opinion rendered in this [fol. 212] court on the same subject on the 17th day of January, 1929. In all events, the said order of the Florida Commissioners was unnecessary and unlawful.

XXI

The proceedings in the Circuit Court of Duval County were unlawful and were null and void for the reason that

the said court undertook to deal with a subject matter beyond its jurisdiction, that subject matter being the amendment or the annulling in whole or in part of the said order of the Interstate Commerce Commission. It was further null and void because the said cause had been removed to the proper United States District Court prior to the entry thereof.

XXII

The said order of the Florida Commissioners, No. 979, and the said proceedings by the Florida Commissioners in the Circuit Court of Duval County, Florida, make a direct conflict between the authority of the Federal Government and the acts of those who are undertaking to enforce the powers of the State of Florida.

XXIII

The rates for the intrastate transportation of logs in Florida prescribed as aforesaid by the Interstate Commerce Commission pursuant to lawful authority are the only lawful rates for such intrastate transportation of logs. Intervenor affirms that the said order #979 of the Florida Commission is unlawful and void and that the aforementioned order of the Circuit Court of Duval County, Florida is also unlawful and void. Any order which this Court may make in this cause sustaining the order of the Interstate Commerce Commission should in order to afford completely effective relief to intervenor, enjoin the said Florida Commissioners and their counsel and em- [fol. 213] ployees from enforcing either the said order of the Florida Commissioners or the said order of this Circuit Court of Duval County, Florida.

XXIV

Wherefore intervenor prays:

(1) That the prayers of the complainants be denied:

(2) That the Interstate Commerce Commission's order dated August 2, 1928, effective over all of the lines of this intervenor in the State of Florida, without exception, be held to be valid;

(3) That this court do those things and enter such orders and decrees as may be necessary or proper to make effective the said order of the Interstate Commerce Commission; and that it issue such restraining orders and injunctions, restraining and enjoining the complainants, who are the Florida Railroad Commissioners, and their attorneys and agents, from making or enforcing any order, rule, rate or regulation in conflict with said order of the Interstate Commerce Commission, and also from enforcing any order or decree of the Circuit Court of Duval County, Florida, heretofore entered or which may be entered, undertaking to interefere with the said order of the Interstate Commerce Commission;

(4) That all such orders, interlocutory and/or final, as may be necessary or appropriate to full relief in the premises be entered;

(5) Intervenor prays such other and further relief as may be meet and proper in the premises.

F. B. Grier, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Atlantic Coast Line R. R. Co.

[fol. 214] *Duly sworn to by Frank L. Glover. Jurat omitted in printing.*

Received in clerk's office March 27, 1929.

[fol. 215] INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of orders of the Commission entered February 5 and February 7, 1929, in Case No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 1st day of March, A. D. 1929.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

Received in Clerk's Office Mar. 27, 1929.

At a session of the Interstate Commerce Commission, Division 4, held at its office, in Washington, D. C., in the 5th day of February, A. D., 1929.

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Upon further consideration of the record in the above-entitled proceeding, and for good cause shown:

It is ordered, That the order heretofore entered in this proceeding on August 2, 1928, be, and it is hereby, amended as follows: By inserting after "logs, except walnut, cherry, and cedar" in the second, third, and fourth paragraphs of said order the following: "and except ash, gum, hickory, oak, pine, and cypress logs not over six feet in length."

[fol. 216] It is further ordered, That in all other respects said order shall remain in full force and effect.

By the commission, division 4.

George B. McGinty, Secretary. (Seal.)

Order

At a session of the Interstate Commerce Commission, Division 4, held at its office, in Washington, D. C., on the 7th day of February, A. D., 1929.

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Upon further consideration of our order heretofore entered in this proceeding on August 2, 1928, as amended by orders entered August 27th, October 19th, and November 30th, 1928, and February 5, 1929, and because of doubt that has arisen as to the territorial limits intended to be covered by that portion of said order of August 2, 1928,

as amended, prescribing intrastate rates within the State of Florida:

It is ordered, That the said order of August 2, 1928, as amended, be, and it is hereby, changed in language for the purpose of clarification as follows: In the fourth paragraph of said order of August 2, 1928, substitute for "within the State of Florida" the following: "within and throughout the entire State of Florida, without exception,"

By the Commission, Division 4.

George B. McGinty, Secretary. (Seal.)

[fol. 217] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION ON REHEARING—Filed Mar. 22, 1929

On February 7th, 1929, subsequent to the decision in this case, the Interstate Commerce Commission ordered that its order of August 2nd, 1928 be "changed in language for the purpose of clarification as follows: In the 4th paragraph substitute for 'within the state of Florida' the following: 'within and throughout the entire State of Florida, without exception.'" A rehearing has been granted and the Atlantic Coast Line Railroad Company allowed to intervene in support of the order.

The ambiguity which we formerly found in the order of the Commission is now removed and the intent made clear that the intrastate log rate in question is to be changed over the entire Coast Line system in Florida. This clarifying order is not to be esteemed a new order, or even an amendment extending the former one, but is only a clarification of that which was found before to be uncertain, and [fol. 218] though made without further hearing or evidence, is none the less effective from its date, at least. We have therefore to examine the record more closely and see if a state wide change of the rate is sustainable. Except as to the territorial application of the order we find no occasion to modify what was previously ruled. The evidence does not show any actual or potential interstate commerce from South Florida in such logs as are involved in this rate.

Because of their cheapness and of the geography of the State the inherent probabilities are against it. No such case is, therefore, shown by the evidence as to justify a statewide order altering the intrastate rate because of undue prejudice to shippers and localities, or because of undue discrimination against the particular interstate commerce in such logs. There is, however, another discrimination against general interstate commerce when one state rate or the system of state rates is so low as to throw an undue burden on the revenues arising from interstate commerce in order to sustain the carrier engaged in both kinds of commerce. The natural remedy for such a condition is a change of the state rate or rates to the full extent of their application. The present order raising the state rate of the Atlantic Coast Line over its entire system in Florida we think is justified on this ground. The power to prescribe the state rate on a single commodity, over a single road, is included in the language of Section 13 (4) of the Commerce Act, whenever the conditions therein stated occur. If such a rate alone is put in issue and fully heard, the power is given to prescribe "the rate" to be thereafter observed. The complaint of the Georgia State Commission exhibited the Coast Line intrastate log rate and attacked it in its entirety and as applied to all points in Florida. There was no territorial limitation in the complaint. No such limitation was put on the inquiry by any subsequent amendment or by any order of the Commission. Besides a full attack upon the rate because of undue prejudice to and preference of persons and places in interstate commerce under Section 3, the complaint, in paragraph 11, attacked the rate expressly under Section 13 for every reason mentioned in [fol. 219] that Section as ground for prescribing a state rate. The rate was therefore in issue for all purposes of Section 13, although there was no express prayer for its enhancement and no express allegation that is was unprofitable to the carrier. The State of Florida was accordingly notified and the power and duty of the Commission as set forth in Section 13 (4) attached. Upon the hearings, it is true that the parties appeared interested mostly in North Florida because of prejudice to shipments there, and the great bulk of the evidence related thereto, but in addition to the common knowledge and skill in rate matters that the

Interstate Commerce Commission, the Georgia and Florida State Commissions and the railroads must have in such matters, there was a presentation in the evidence by the Coast Line and by the Florida Commission respectively, of the cost of service under the attacked rate and of its remunerativeness. Certainly no other litigant could have known the facts better than they. In rejecting the conclusion of slight net income asserted by the witnesses, the Commission did not rule out the basic facts shown, but was at liberty to supplement them and construe them for itself, and make its own conclusion from them. There was in evidence also comparisons of the attacked rate with rates on similar logs of other railroads in Florida and in adjacent states, and on other articles such as sand, gravel, brick, lime and cement, which like logs, are shipped in large lots, loaded and unloaded by patrons, and expose the carrier to little risk of loss. There was further comparison with interstate rates established by the Commission itself for this same railroad and in this same territory. All these rates were shown to be from twice to thrice the attacked log rate. On the face of things the log rate is too low and likely to burden the carrier. The Commission expressly finds that it is obviously unremunerative. It is shown that the Commerce in logs over the Coast Line system is and will continue to be very large and this item of its rates is therefore an important one. We cannot say the order is without evidence to sustain it on the ground that the former state rate was an undue discrimination against general [fol. 220] interstate commerce over the Coast Line railroads.

Because of the generalness of the complaint and the relative inconspicuousness of the evidence above discussed we have considered whether there was the full hearing which is made by Section 13, a prerequisite to the prescription of a state rate. We have seen that the parties to the establishment of that rate presented pertinent facts on this issue and all others had full opportunity to do so. When the examiner filed his report, on page 9 thereof he made an express finding on the unremunerativeness and burdensomeness of the rate, but favorable to it. The exceptions to his report and the replies thereto discussed this finding, but do not contend that it was foreign to the investigation, but only

whether it was right or wrong under the evidence. So, when Division 4 of the Commission disagreed with the examiner on this and other findings and an application for rehearing before the entire Commission was made, there is again no motion to reopen the case for more evidence on this point, but all that is asked is more opportunity for argument on the evidence already taken, one set of litigants contending that the evidence required one conclusion and the other side contending the contrary. There is before us no distinct claim that any other important evidence could or would be offered on another hearing. We find no reason to doubt that, however disappointing the result, the hearing was full within the meaning of the statute, and the power of the Interstate Commerce Commission not abused.

This 22 day of March, 1929.

Sam'l H. Sibley, U. S. Judge.

[fol. 221] In United States District Court

In Equity. No. 514

State of Florida and A. S. Wells, E. S. Matthews, and Mamie G. Eaton, as and Constituting Florida Railroad Commission, Complainants,

vs.

United States of America and Interstate Commerce Commission, Defendants

Final Decree on Rehearing—Filed April 22, 1929.

In the above case, on petition of Complainants to open our former decree entered on January 17th, 1929, denying relief and dismissing the original bill, a rehearing was granted and said decree reopened, and thereupon the Atlantic Coast Line Railroad Company, on its petition, was allowed to intervene in support of the order of the Interstate Commerce Commission of August 2nd, 1928.

The case was submitted for final decree on the reargument and rehearing, to a court of three judges, to-wit: Hon. Richard W. Walker, United States Circuit Judge, Hon.

Samuel H. Sibley, United States District Judge, and Hon. Benjamin C. Dawkins, United States District Judge.

After hearing argument on the same evidence as at the first hearing, and the Court being fully advised:

It is, for the reasons stated in our opinion March 22nd, 1929 (which opinion is duly filed as part of the record), ordered, adjudged and decreed that the original and supplemental bill be and the same hereby is now dismissed and the [fol. 222] relief prayed denied.

This 17th day of April, 1929.

R. W. Walker, United States Circuit Judge. Ben C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

[File endorsement omitted.]

[fol. 223] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed June 6, 1929

The State of Florida, and A. S. Wells, E. S. Matthews and Mamie G. Eaton, as and constituting Florida Railroad Commission, complainants, feeling themselves aggrieved by the final order or decree of the United States District Court for the Northern District of Georgia, dated April 17, 1929, and entered April 22, 1929, which denied the relief sought and dismissed the bill and supplemental bill, pray an appeal therefrom to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith. They pray that appeal be allowed and that citation be issued as provided by law, and that the transcript of the record, proceedings and document upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States.

Fred H. Davis, as Attorney General; T. T. Turnbull, Solicitors for State of Florida and A. S. Wells, E. S. Matthews, and Mamie G. Eaton, as and Constituting Florida Railroad Commission.

[fol. 224] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 6, 1929

The State of Florida, and A. S. Wells, E. S. Matthews and Mamie G. Eaton, as and constituting Florida Railroad Commission, complainants herein, by their respective counsel, now come and in connection with their Petition for Appeal file the following Assignment of Errors on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court herein, dated April 17, 1929, and entered April 22, 1929.

The District Court erred:

I

In denying the relief prayed, and in dismissing the bill and supplemental bill.

II

In failing and refusing to find that the report and order of the Interstate Commerce Commission of August 2, 1929, as amended February 7, 1929, constitute an unlawful exercise of power by said Commission and are without warrant or authority of or under the Constitution of the United States.

[fol. 225]

III

In failing and refusing to find that there is not and cannot be any interstate commerce in logs over the Atlantic Coast Line Railroad from Florida origins to Georgia destinations on its line.

IV

In failing and refusing to find that the compulsory increase of the Florida intrastate rates on logs of the Atlantic Coast Line Railroad Company could not and did not result in the creation of interstate commerce in logs over the Atlantic Coast Line Railroad Company from Florida to Georgia.

V

In failing and refusing to find that there was no substantial evidence of record before the Interstate Commerce Commission showing or tending to show that substantially similar circumstances and conditions surrounded the transportation of logs by railroad on the one hand over the Atlantic Coast Line Railroad Company between points in Florida and on the other hand from origins on its line in Florida to destinations in Georgia.

VI

In failing and refusing to find that there was no issue or controversy under the issues as restricted and defined at the hearing before the Interstate Commerce Commission as to the question that the lower level of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company caused or would cause unjust discrimination against interstate commerce as such in violation of Section 13 of the interstate commerce act.

VII

In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are unlawful because said Commission has thereby sought to embrace within the scope thereof all rates of the Atlantic Coast Line Railroad Company on logs between any stations on its line wholly within the State of Florida for any [fol. 226] length of haul, not exceeding 170 miles, and in any portion of such State, although there was no case or controversy submitted to that tribunal or pending before it involving in any way freight rates of the Atlantic Coast Line Railroad Company on logs within Florida, except for hauls of 170 miles and less over such railroad wholly within the so-called Northern portion of the State of Florida.

VIII

In failing and refusing to find that the said order as amended is invalid because of its territorial scope, in that said order as amended fixes the intrastate rates on logs between all points on all the lines of the Atlantic Coast

Line Railroad Company in Florida, whereas the intrastate rate investigation in said proceedings before the Interstate Commerce Commission was limited to movements of logs between points on only a portion of the lines of said Atlantic Coast Line Railroad Company located in only a small area situated in Northern Florida.

IX

In failing and refusing to find that there was no evidence whatsoever before the Interstate Commerce Commission supporting or tending to support the conclusion that the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company would subject interstate commerce to unjust discrimination in violation of Section 13 of the interstate commerce act.

X

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because they seek to interfere with the voluntary continuance of the Florida intrastate rates on logs over its line by the Atlantic Coast Line Railroad Company without any substantial evidence showing or tending to show that the continuance of such Florida intrastate log rates in any way violates the provisions of Section 3 or 13 of the Interstate [fol. 227] Commerce Act, and without any request or petition by said Atlantic Coast Line Railroad Company by the Georgia Public Service Commission, or by any other party to either the Interstate Commerce Commission or to the Florida Railroad Commission to increase such Florida intrastate log rates, and without any other effort whatsoever by said Atlantic Coast Line Railroad Company to increase said rate.

XI

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because there was no substantial evidence to support the finding that such Florida intrastate log rates are less than reasonably compensatory.

XII

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because the facts of record before the Commission do not show that there is or would be any real or substantial injury to or restriction upon interstate commerce as a consequence of the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company.

XIII

In failing and refusing to find that the report and order of the Interstate Commerce Commission constitute an unlawful invasion of the sovereign rights of the State of Florida reserved to it under the Constitution of the United States and of the citizens of the State of Florida and is without any warrant or authority of or under the Constitution of the United States, and, further that said Interstate Commerce Commission was and is without jurisdiction to enter said report and order.

XIV

In failing and refusing to find that the issue as to whether the lower level of the Florida intrastate log rates of the [fol. 228] Atlantic Coast Line Railroad Company cause or would cause unjust discrimination against interstate commerce in violation of Section 13 when construed with Section 15a of the Interstate Commerce Act, was eliminated from the proceeding before the Commission by the parties thereto.

XV

In failing and refusing to find that the intrastate rates, investigated by the Interstate Commerce Commission, were not those contemplated by Section 13 (4) of the Interstate Commerce Act, as amended, because same were voluntarily initiated by the carrier, and therefore not "made or imposed by authority of any State", within the description of Section 13 (3) of said Act.

XVI

In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are un-

lawful because there were no facts of record in such proceeding before the Interstate Commerce Commission showing, or tending to show, nor did the Interstate Commerce Commission find any facts sufficient to constitute, unjust discrimination against interstate commerce in violation of the provisions of Section 13 of the Interstate Commerce Act.

XVII

In holding that the order of the Interstate Commerce Commission of August 2, 1928, as amended on February 7, 1929, was within the issues sought to be investigated by said Commission.

XVIII

In holding that said order of the Interstate Commerce Commission was made after full hearing by said Commission.

XIX

In holding that the report and order of the Interstate Commerce Commission raising the state rate of the Atlantic Coast Line Railroad Company over its entire system in Florida on logs is justified in order to remove discrimination against general interstate commerce in that said [fol. 229] Florida intrastate log rates are so low as to throw an undue burden on the revenues arising from interstate commerce.

XX

In the holding that "there was no territorial limitation in the complaint. No such limitation was put on the inquiry by any subsequent amendment or by any order of the Commission. * * * The rate was therefore in issue for all the purposes of Section 13, although there was no express prayer for its enhancement, and no express allegation that it was unprofitable to the carrier."

XXI

In holding that "in rejecting the conclusion of slight net income asserted by the witnesses, the Commission did not rule out the basic facts shown, but was at liberty to supplement them and construe them for itself, and make its own conclusion from them."

XXII

In holding that the Interstate Commerce Commission, in reaching its conclusion respecting the Florida intrastate rates on logs, was entitled to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions, and the railroads must have in such matters."

XXIII

In the holding that "on the face of things the log rate is too low, and likely to burden the carrier."

XXIV

In holding that "we cannot say that the order is without evidence to sustain it, on the ground that the former state rate was an undue discrimination against general interstate commerce over the Coast Line Railroads."

XV

In holding that the complainants in their reply to the exceptions of said Georgia Public Service Commission to [fol. 230] the report of the examiner of the Interstate Commerce Commission failed to contend that the finding of said report with respect to the burdensomeness of said rate was foreign to said investigation.

XXVI

In holding that the complainants in their application for a re-hearing before the entire Interstate Commerce Commission failed to contend that the burdensomeness of the Florida intrastate rate was foreign to the investigation had by said Interstate Commerce Commission.

XXVII

In failing to suspend, annul and permanently enjoin the Commission's order of August 2, 1928, as amended from time to time in order to extend the effective date thereof, and as changed in language for the purpose of clarification

on February 7, 1929, insofar as said order applied to rates on the intrastate transportation of logs in Florida.

Wherefore complainants and each of them pray that the final order or decree of the District Court dated April 17, 1929, and entered April 22, 1929 be reversed and that the matter be remanded to said Court with instructions to suspend, annul and permanently enjoin said order of the Commission entered on August 2, 1928 (and changed in language for the purpose of clarification on February 7, 1929) in the proceeding before the Commission cited Georgia P. S. Commission v. A. C. L. R. R. Co., 146 I. C. C. 717, insofar as said order applied to the rates on the transportation of logs intrastate within the State of Florida over the lines of the Atlantic Coast Line Railroad Company.

Fred H. Davis, as Attorney General; T. T. Turnbull, Solicitors for State of Florida and A. S. Wells, E. S. Matthews, and Mamie G. Eaton, as and Constituting Florida Railroad Commission.

[fol. 231] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING APPEAL—Filed June 19, 1929

The complainants having filed their petition for appeal herein, the same is hereby granted and the complainants are hereby allowed to appeal said cause, and

It is ordered that said appeal be and the same is hereby entered to the Supreme Court of the United States upon the filing of a bond by said complainants in the sum of Five Hundred Dollars ($500.00) with good and sufficient surety to be approved by this Court, conditioned upon the said complainants prosecuting their appeal to effect, and answering all costs if they fail to make their plea good.

This 6th day of June, A. D. 1929.

R. W. Walker, United States Circuit Judge. Ben C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

[fols. 232 & 233] Bond on appeal for $500.00 approved and filed June 13, 1929, omitted in printing.

[fol. 234] In United States District Court

Notice of Appeal to the Attorney General, State of Georgia—Filed June 20, 1929

Atlanta, Georgia, June 19, 1929.

To the Honorable George Napier, Attorney General, State of Georgia, Atlanta, Georgia.

Dear Sir: Please take notice that by order of the United States District Court for the Northern District of Georgia, made and entered June 6, 1929, appeal to the Supreme Court of the United States by complainants has been taken and allowed in the following cases:

State of Florida et al. v. United States of America et al., in Equity, No. 514.

Wilson Lumber Co. of Florida v. United States of America et al., in Equity, No. 512.

Brooks-Scanlon Corp. et al. v. United States of America et al., in Equity, No. 511.

Fred Davis, H. P. Osborne, G. T. Rutherford, J. V. Norman, Chas. E. Cotterill, August Gutheim, H. P. Adair, Counsel for Appellants.

Acknowledgment

The foregoing notice received this 19th day of June, 1929.

T. R. Gress, Asst. Attorney General, State of Georgia.

[fol. 235] In United States District Court

[Title omitted]

Præcipe for Transcript of Record—Filed June 20, 1929

To the Clerk of the above-entitled Court:

Please prepare a Transcript of the record in the above-entitled causes in the matter of Appeals therein, and in-

clude in said transcript in the order given below the following matter, viz:

[fol. 236] In No. 514

1. Bill of Complaint filed by Complainants November 27, 1928.

2. Notice of Application for Interlocutory Injunction by Complainants, served November 28, 1928.

3. Answer of United States of America filed December 24, 1928.

4. Petition for Intervention as Party Defendant by Georgia Public Service Commission, and Order dated December 29, 1928, granting petition, filed December 29, 1928.

5. Answer of Georgia Public Service Commission filed December 29, 1928.

6. Answer of Interstate Commerce Commission filed January 3, 1929.

7. Order of Court, made and entered January 3rd, 1929, that the three proceedings, Nos. 514, 511, and 512, be consolidated for the purpose of trial.

8. Certified copy of Transcript of Record of the Evidence and Proceedings before the Interstate Commerce Commission in the matter entitled, No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, offered in evidence by counsel for all the Complainants jointly in Nos. 514, 511, and 512, and so received, (or in lieu thereof any narrative statement of the record of said evidence and proceedings agreed upon by the parties, and/or approved by the Court).

9. Opinion of the Court, dated and filed January 17, 1929.

10. Order of the Court on submission for final decree, denying the relief prayed by Complainants and dismissing the Bill, dated and filed January 17, 1929.

11. Petition for re-hearing filed by Complainants February 21, 1929.

12. Supplemental Bill of Complaint, tendered by Complainants February 21, 1929, and received in the Clerk's office of the above-entitled Court on said date, together with the Exhibits therein mentioned and made a part thereof, said exhibits being marked Exhibits A, B, C, D, E, and F, to said Supplemental Bill.

13. Notice of Application for Temporary Injunction filed by Complainants March 1, 1929.

14. Order Entertaining Petition for Re-hearing and to show Cause, dated the 21st day of February, 1929, and received in the Clerk's office of the above-entitled Court February 21, 1929.

[fol. 237] 15. Return of United States of America to Rule to show Cause.

16. Answer of the United States to the Supplemental Bill of Complaint, sworn to March 1st, 1929.

17. Order of Court, made and entered March 7th, 1929, granting the petition of complainants for a re-hearing and permitting the complainants to file their supplemental bill of complaint herein, and also granting the motion of Atlantic Coast Line Railroad Company for leave to intervene.

18. Petition of Atlantic Coast Line Railroad Company to intervene in this Cause, and Order dated March 7, 1929, granting said Petition and allowing said Atlantic Coast Line Railroad Company to Intervene in this cause.

19. Motion of Atlantic Coast Line Railroad Company Preliminary to Pleading to the Merits of this Case.

20. Answer or Intervention of Atlantic Coast Line Railroad Company, sworn to March 6, 1929.

21. Copies of orders of the Interstate Commerce Commission entered February 5 and February 7, 1929, in Case No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, together with Certificate of Secretary of Interstate Commerce Commission, dated the 1st day of March, A. D. 1929, thereto attached.

22. Order of Court, made and entered March 7th, 1929, that the intervention filed on behalf of Atlantic Coast Line Railroad Company be referred to the trial of this cause on the merits.

23. Opinion of the Court, dated and filed March 22, 1929.

24. Final Decree of Re-hearing, dismissing the Original and Supplemental Bills and denying the relief prayed, dated the 17th day of April, 1929, filed April 22, 1929.

25. Petition for Appeal, filed by Complainants June 6, 1929.

26. Assignment of Errors filed by Complainants June 6, 1929.

27. Order of the above-entitled Court granting Appeal, dated June 6, 1929.

[fol. 238] 28. Bond on Appeal, approved June —, 1929, filed June —, 1929.

29. Citation on Appeal, dated June 6th, 1929.

30. Notice of Appeal addressed to Attorney General of the State of Georgia, filed June 20th, 1929.

31. This Præcipe for Transcript of Record, filed June 29th, 1929.

32. All acknowledgments of receipt of copies of petition for appeal, Assignment of Errors, Order Granting Appeal, Citation on Appeal and Præcipe for Transcript of Record, such acknowledgments being signed by attorneys for United States of America, Interstate Commerce Commission, Georgia Public Service Commission, and Atlantic Coast Line Railroad Company,

In No. 511

1. Bill of Complaint filed by Complainants November 24, 1928.

2. Notice of Application for Interlocutory Injunction by Complainants, served November 26, 1928.

3. Answer of United States of America filed December 24, 1928.

4. Petition for Intervention as Party Defendant by Georgia Public Service Commission, and Order dated December 29, 1928, granting petition, filed December 29, 1928.

5. Answer of Georgia Public Service Commission filed December 29, 1928.

6. Answer of Interstate Commerce Commission filed January 3, 1929.

7. Order of Court, made and entered January 3, 1929, that the three proceedings, Nos. 514, 511 and 512, be consolidated for the purpose of trial.

NOTE.—This is the identical order described in Item 7 of the documents in No. 514, and is here incorporated by reference thereto. (See original page 2; printed pages —.)

8. Certified copy of Transcript of Record of the Evidence and Proceedings before the Interstate Commerce Commission in the matter entitled No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company,

offered in evidence by counsel for all the Complainants jointly in Nos. 514, 511, and 512, and so received (or in lieu thereof any narrative statement of the record of evidence agreed upon by the parties, and/or approved by the Court.)

[fol. 239] NOTE.—This is the identical document described in Item 8 of the documents in No. 514, and is here incorporated by reference thereto. (See original page 2; printed pages —.)

9. Opinion of the Court, dated and filed January 17, 1929.

NOTE.—This is the identical document described in Item 9 of the documents in No. 514, and is here incorporated by reference thereto. (See original page 2; printed pages —.)

10. Order of the Court on submission for final decree, denying the relief prayed for by Complainants and dismissing the Bill dated and filed January 17, 1929.

11. Petition for Re-hearing filed by Complainants February 21, 1929.

12. Supplemental Bill of Complaint, tendered by Complainants February 21, 1929, and filed on said date, together with the Exhibits therein mentioned and made a part thereof, said Exhibits being marked Exhibits A, B, C, D, E, and F to said Supplemental Bill.

NOTE.—Said Exhibits marked A, B, C, D, E, and F to said Supplemental Bill are the identical documents described respectively in Item 12 of the documents in No. 514 as Exhibits A, B, C, D, E, and F to the Supplemental Bill of Complaint of the State of Florida et al., and are here incorporated by reference thereto. (See original page 2; printed pages —.)

13. Notice of Application for Temporary Injunction filed by Complainants March 1, 1929.

14. Order entertaining Petition for Re-hearing and to Show Cause, dated the — day of February, 1929, and filed February 21, 1929.

15. Return of the United States of America to Rule to Show Cause.

16. Answer of the United States to the Supplemental Bill of Complaint, sworn to March 1, 1929.

17. Order of Court, made and entered March 7, 1929, granting the petition of complainants for a re-hearing and permitting the complainants to file their supplemental bill of complaint herein, and also granting the motion of Atlantic Coast Line Railroad Company for leave to intervene.

NOTE.—This is the identical order described in Item 17 of the documents in No. 514, and is here incorporated by reference thereto. (See original page 3; printed pages —.)

18. Petition of Atlantic Coast Line Railroad Company to Intervene in this Cause, and Order dated March 7, 1929, granting said petition and allowing said Atlantic Coast Line Railroad Company to intervene in this cause.

[fol. 240] 19. Motion of Atlantic Coast Line Railroad Company preliminary to Pleading to the Merits of this Case.

20. Answer or Intervention of Atlantic Coast Line Railroad Company, sworn to March 6, 1929.

21. Copies of Orders of the Interstate Commerce Commission entered February 5 and February 7, 1929, in Case No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, together with Certificate of Secretary of Interstate Commerce Commission, dated the 1st day of March, A. D., 1929, thereto attached.

NOTE.—These are the identical documents described in Item 21 of the documents in No. 514, and are here incorporated by reference thereto. (See original page 3; printed pages —.)

22. Order of Court, made and entered March 7th, 1929, that the intervention filed on behalf of Atlantic Coast Line Railroad Company be referred to the trial of this cause on the merits.

NOTE.—This is the identical order described in Item 22 of the documents in No. 514, and is here incorporated by reference thereto. (See original page 3; printed pages —.)

23. Opinion of the Court, dated and filed March 22, 1929.

NOTE.—This is the identical document described in Item 23 of the documents in No. 514, and is here incorporated by reference thereto. (See original page 3; printed pages —.)

24. Final Decree on Re-hearing, Dismissing the Original and Supplemental Bill and Denying the Relief Prayed, dated the 17th day of April, 1929, filed April 22, 1929.

25. Petition for Appeal, filed by Complainants June 6th, 1929.

26. Assignment of Errors filed by Complainants June 6th, 1929.

27. Order of the above-entitled Court granting Appeal, dated June 6th, 1929.

28. Bond on Appeal, approved June 13th, 1929, Filed June 13th, 1929.

29. Citation on Appeal, dated June 6th, 1929.

30. Notice of Appeal addressed to Attorney General of the State of Georgia, filed June 20th, 1929.

NOTE.—This is the identical document described in Item 30 of the documents in No. 514, and is here incorporated by references thereto. (See original page 4; printed pages —.)

31. This Præcipe for Transcript of Record, Filed June 29th, 1929.

NOTE.—This is the identical document described in Item 31 of the documents in No. 514, and is here incorporated by references thereto. (See original page 4; printed pages —.)

[fol. 241] 32. All acknowledgments of receipt of copies of petition for appeal, Assignment of Errors, Order Granting Appeal, Citation on Appeal, and Praecipe for Transcript of Record, such acknowledgments being signed by attorneys for United States of America, Interstate Commerce Commission, Georgia Public Service Commission, and Atlantic Coast Line Railroad Company.

In No. 512

1. Bill of Complaint filed by Complainant November 26, 1928.

2. Application for Interlocutory Injunction and Notice thereof filed November 28, 1928.

3. Answer of United States of America filed December 24, 1928.

4. Petition for Intervention as Party Defendant by Georgia Public Service Commission and Order dated December 29, 1928, granting Petition filed December 20, 1928.

5. Answer of Georgia Public Service Commission filed December 29, 1928.

6. Intervention of Interstate Commerce Commission filed January 3, 1929.

7. Answer of Interstate Commerce Commission filed January 3, 1929.

8. Order of Court, made and entered January 3, 1929, that the three proceedings, Nos. 514, 511, and 512, be consolidated for the purpose of trial.

NOTE.—This is the identical order described in Item 7 of the documents in No. 514, and is here incorporated by reference thereto. (See original page 2; printed pages —.)

9. Certified copy of Transcript of Record of the Evidence and Proceedings before the Interstate Commerce Commission entitled No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, offered in evidence by counsel for all the Complainants jointly (or in lieu thereof any narrative statement of the record of evidence agreed upon by the parties, and/or approved by the Court.

NOTE.—This is the identical document described in Item 8 of the documents in No. 514, and is here incorporated by reference thereto. (See original page 2; printed pages —.)

10. Opinion of the Court, dated and filed January 17, 1929.

NOTE.—This is the identical document described in Item 9 of the documents in No. 514, and is here incorporated by reference thereto. (See original page 2; printed pages —.)

[fol. 242] 11. Order of the Court, on submission for final decree, denying the relief prayed for by Complainant and dismissing the Bill, dated and filed January 17, 1929.

12. Petition for Re-hearing filed by Complainant February 21, 1929.

13. Supplemental Bill of Complaint tendered by Complainant February 21, 1929, and received in the Clerk's office of the above-entitled Court on said date, together with the Exhibit therein mentioned, and made a part thereof, said Exhibit being marked Exhibit D to Said Supplemental Bill.

NOTE.—Said Exhibit marked D to Said Supplemental Bill is the identical document described in Item 12 of the documents in No. 514 as Exhibit D to the Supplemental Bill of Complaint of the State of Florida et al., and is here incorporated by reference thereto. (See original page 2; printed pages —.)

14. Notice of Application for Temporary Injunction filed by Complainant March 1, 1929.

15. Order Entertaining Petition for Re-hearing and to show cause, dated the 21st day of February, 1929.

16. Return of United States of America to Rule to Show Cause.

17. Answer of the United States to the Supplemental Bill of Complaint, sworn to March 1, 1929.

18. Order of Court, made and entered March 7, 1929, granting the petition of complainants for a re-hearing and permitting the complainants to file their supplemental bill of complaint herein, and also granting the motion of Atlantic Coast Line Railroad Company for leave to intervene.

NOTE.—These are the identical documents described in Item 21 of the documents in No. 514, and are here incorporated by reference thereto. (See original page 3; printed pages —.)

19. Petition of Atlantic Coast Line Railroad Company to Intervene in this Cause, and Order dated March 7, 1929, granting said Petition and allowing said Atlantic Coast Line Railroad Company to intervene in this cause.

20. Motion of Atlantic Coast Line Railroad Company Preliminary to Pleading to the Merits of this Case.

21. Answer or Intervention of Atlantic Coast Line Railroad Company, sworn to March 6, 1929.

22. Copies of Orders of the Interstate Commerce Commission entered February 5 and February 7, 1929, in Case [fol. 243] No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, together with Certificate of Secretary of Interstate Commerce Commission dated the 1st day of March, A. D., 1929, thereto attached.

NOTE.—These are the identical documents described in Item 21 the doucments in No. 514, and are here incorporated

by reference thereto. (See original page 3; printed pages —.)

23. Order of Court, made and entered March 7th, 1929, that the intervention filed on behalf of Atlantic Coast Line Railroad Company be referred to the trial of this cause on the merits.

NOTE.—This is the identical order described in Item 22 of the documents in No. 514, and is here incorporated by reference thereto. (See original page 3; printed pages —.)

24. Opinion of the Court, dated and filed March 22, 1929.

NOTE.—This is the identical document described in Item 23 of the documents in No. 514, and is here incorporated by reference thereto. (See original page 3; printed pages —.)

25. Final Decree on Re-hearing, dismissing the Original and Supplemental Bill and denying the relief prayed, dated the 17th day of April, 1929, filed April 22, 1929.

26. Petition for Appeal, filed by Complainant June 6th, 1929.

27. Assignment of Errors filed by Complainant June 6th, 1929.

28. Order of the above-entitled Court allowing Appeal, dated June 6th, 1929.

29. Bond on Appeal, approved June 13th, 1929, filed June 13th, 1929.

30. Citation on Appeal, dated June 6th, 1929.

31. Notice of Appeal addressed to Attorney General of the State of Georgia filed June 20th, 1929.

NOTE.—This is the identical document described in item 30 of the documents in No. 514, and is here incorporated by reference thereto. (See original page 4; printed pages —.)

32. This Præcipe for Transcript of Record, filed June 20th, 1929.

NOTE.—This is the identical document described in item 31 of the documents in No. 514, and is here incorporated by reference thereto. (See original page 4; printed pages —.)

33. All acknowledgments of receipt of copies of Petition [fol. 244] for Appeal, Assignment of Errors, Order Granting Appeal, Citation on Appeal, and Præcipe for Tran-

script of Record, such acknowledgments being signed by attorneys for United States of America, Interstate Commerce Commission, Georgia Public Service Commission, and Atlantic Coast Line Railroad Company.

Fred H. Davis, T. T. Turnbull, Solicitors for State of Florida and A. S. Wells, E. S. Mathews, and Mamie G. Eaton, as and Constituting Florida Railroad Commission. Chas. E. Cotterill, August G. Gutheim, H. P. Adair, Geo. L. Rutherford, E. W. Mitchell, Solicitors for Brooks-Scanlon Corporation, Cummer Cypress Company, and Wilson Cypress Company. J. V. Norman, Norman, Quirk & Graham, Solicitors for Wilson Lumber Company of Florida.

[fol. 245] In United States District Court

Acknowledgment of Service—Filed June 20, 1929.

Service is hereby acknowledged by each, the Georgia Public Service Commission, and Atlantic Coast Line Railroad Company, defendants, of copies of the following described appeal papers in the above entitled cause:

1. Complainants' Petition for Appeal.
2. Complainants' Assignment of Errors.
3. Order of the District Court granting Appeal.
4. Præcipe for transcript of record.

Jas. A. Perry, Atty. for Georgia Public Service Commission. Alston, Alston, Foster & Moise, for Atlantic Coast Line Railroad Company.

Dated this 20th day of June, A. D. 1929.

[fols. 246-250] Citation, in usual form, showing service on Elmer B. Collins and J. Stanley Payne et al., filed June 20, 1929, omitted in printing.

[fol. 251] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 252] IN UNITED STATES DISTRICT COURT

[Title omitted]

This package constitutes item No. 8 (of the præcipe), described as:

"8. Certified copy of Transcript of Record of the Evidence and Proceedings before the Interstate Commerce Commission in the matter entitled No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, offered in evidence by counsel for all the Complainants jointly in Nos. 514, 511 and 512, and so received (or in lieu thereof any narrative statement of the record of said evidence and proceedings agreed upon by the parties, and/or approved by the Court)."

[fol. 253] BEFORE INTERSTATE COMMERCE COMMISSION, WASHINGTON

SECRETARY'S CERTIFICATE

I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Complaint filed May 3, 1926,

Answer of Atlantic Coast Line R. R. Co. filed June 26, 1926,

Intervening petition of Elberta Crate Company and order of the Commission entered July 3, 1926, permitting same,

Intervening petition of Jacksonville Traffic Bureau and order of the Commission entered July 26, 1926, permitting same,

Intervening petition of Georgia-Florida Sawmill Association and order of the Commission entered August 5, 1926, permitting same,

Intervening petition of Southern Cypress Manufacturers' Association and order of the Commission entered August 9, 1926, permitting same,

Intervening petition of Southern Pine Association and order of the Commission entered August 14, 1926, permitting same,

Intervening petition of the Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company and Georgia Southern and Florida Railway Company and order of the Commission entered August 17, 1926, permitting same,

Intervening petition of American Short Line Railroad Association and order of the Commission entered September 2, 1926, permitting same.

Intervening petition of Brooks-Scanlon Corporation and order of the Commission entered September 29, 1926, permitting same,

[fol. 254] Amended intervening petition of Jacksonville Traffic Bureau and order of the Commission entered September 14, 1926, permitting same,

Amended intervening petition of Southern Cypress Manufacturers Association and order of the Commission entered September 14, 1926, permitting same,

Amended intervening petition of Southern Pine Association and order of the Commission entered September 14, 1926, permitting same,

Amended intervening petition of Georgia-Florida Sawmill Corporation and order of the Commission entered October 16, 1926, permitting same,

Transcript of the stenographer's notes of the hearing held at Valdosta, Ga., October 20, 21 and 22, 1926, before Examiners F. C. Hillyer and R. M. Brown and of exhibits and intervening petitions filed at said hearing,

Transcript of the Stenographer's notes of the hearing held at Jacksonville, Fla., January 18-21, 1927, before Examiner R. M. Brown and of exhibits filed at said hearing,

Report proposed by R. M. Brown, Examiner,

Exceptions to proposed report filed by Georgia Public Service Commission,

Exceptions to proposed report filed on behalf of Seaboard Air Line Railway Company, et al.,

Reply to exceptions to proposed report filed by Florida Railroad Commission,

[fol. 255] Reply to exceptions to proposed report filed by Jacksonville Traffic Bureau,

Reply to exceptions to proposed report filed by Southeastern Forest Products Association,

Reply to exceptions to proposed report filed by Brooks-Scanlon Corporation, et al.,

Report and order of the Commission filed and entered August 2, 1928,

Petition of Brooks-Scanlon Corporation, et al., for postponement of effective date of order filed Agust 24, 1928,

Petition of Railroad Commission of the State of Florida for postponement of the effective date of order filed August 29, 1928,

Protesting petition of Georgia Public Service Commission for postponement of effective date of order filed August 27, 1928,

Order of the Commission entered August 27, 1928,

Petition for reargument and reconsideration filed by Brooks-Scanlon Corporation, et al., October 1, 1928,

Petition for reargument and reconsideration filed by Railroad Commission of the State of Florida October 1, 1928,

Petition of Wilson Lumber Company of Florida for leave to intervene and for reconsideration and reargument filed October 1, 1928,

Petition of Railroad Commission of the State of Florida [fol. 256] for postponement of the effective date of the order filed October 19, 1928,

Order of the Commission entered October 19, 1928,

Protesting petition of Georgia Public Service Commission for postponement of effective date of order filed October 22, 1928, and

Order of the Commission entered November 1, 1928, in Case No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railway, the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 7th day of November, A. D. 1928.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal.)

[fol. 257] [File endorsement omitted]

[fol. 258] BEFORE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. —

GEORGIA PUBLIC SERVICE COMMISSION

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

ORIGINAL COMPLAINT—Filed May 3, 1926

The above named complainant presents this its complaint against the carrier herein named and thereupon respectfully shows as follows, to-wit:

1. The Georgia Public Service Commission is the regulatory Commission established by the State Legislature of Georgia, charged with the duty of investigating and prescribing just and reasonable intrastate rates in Georgia; and is further charged by law with the duty of investigating interstate rates into and out of Georgia; and when such interstate rates are found to be excessive, unreasonable or discriminatory, it is required to appeal to the Interstate Commerce Commission for relief.

2. The defendant carrier, the Atlantic Coast Line Railroad Company is a common carrier engaged in the transportation of property wholly by railroad between points in the state of Georgia; between points in the State of Florida and between points in the State of Georgia and points in the state of Florida, and as such a common carrier is subject to the provisions of the Interstate Commerce Act.

[fol. 259] 3. That the object of this complaint is to secure reasonable rates on logs from all points on the Atlantic Coast Line Railroad, as hereinafter shown within the state of Florida to all destinations on the said Atlantic Coast Line Railroad in the state of Georgia, and to have removed any unjust discrimination or undue prejudice found to exist as provided in the Interstate Commerce Act.

4. That in the purchase and transportation of logs from Florida points to mills and other consumers located within the state of Georgia, such mills and consumers of logs come in active competition with mills and purchasers of logs located within the state of Florida, drawing logs from Florida points.

5. That said defendant, Atlantic Coast Line Railroad, publishes in Supplement No. 29 to its Southeastern Tariff No. 5-B, I. C. C. B-2255, effective August 24th, 1925, the following special rates on logs:

Logs, carload, except cedar logs, per car 50,000 pounds, excess in proportion. Cars to be loaded and unloaded by owner and not to be unloaded on the railroad right of way. (Not subject to note 7 of Tariff.) Classification note O, page 2-B of tariff.

From A. C. L. R. R. Stations to A. C. L. R. R. Stations

Distance		
40 miles and under		$8.55 per car
60 miles and over	40 miles	10.50 per car
90 miles and over	60 miles	11.50 per car
100 miles and over	90 miles	13.00 per car
110 miles and over	100 miles	14.00 per car
130 miles and over	110 miles	16.00 per car
160 miles and over	130 miles	17.00 per car
170 miles and over	160 miles	18.50 per car

[fol. 260] 6. That said defendant, Atlantic Coast Line Railroad Company, has published for its account by Agent J. H. Glenn, in said Agent's tariff I. C. C. A-415 (Southern Lumber Tariff No. 6), supplements thereto and re-issues thereof, the following schedule of interstate rates from Florida points to Waycross, Climax, Thomasville, Bainbridge, Brunswick and other Georgia points:

Logs, per Car 50,000 Lbs.

Miles		Miles	
5	$12.50	75	32.50
10	15.00	80	32.50
15	17.50	85	35.00
20	17.50	90	35.00

25	20.00	95	35.00
30	20.00	100	35.00
35	22.50	110	37.50
40	22.50	120	40.00
45	25.00	130	42.50
50	25.00	140	42.50
55	27.50	150	45.00
60	27.50	160	45.00
65	30.00	170	47.50
70	30.00		

7. As more specifically reflecting the situation with regard to the adjustment complained of, your petitioner alleges that the following rates represent the general present adjustment from which relief is sought in this complaint.

[fol. 261] Rates on Logs, per Car 50,000 Lbs. Min.

	Distance, miles		Rate per car
Mattox, Fla. to Jacksonville, Fla	24	(a)	$8.55
Monticello, Fla. to Thomasville, Ga	24	(b)	20.00
Fanlew, Fla. to Monticello, Fla	43	(a)	10.50
Fanlew, Fla. to Thomasville, Ga	44	(b)	25.00
Jasper, Fla. to Lake City, Fla	69	(a)	11.50
Jasper, Fla. to Valdosta, Ga	59	(b)	27.50
Jasper, Fla. to Waycross, Ga	67	(b)	30.00
Inverness, Fla. to Kissimmee, Fla	104	(a)	14.00
DeLeon Springs, Fla. to Jacksonville, Fla	105	(a)	14.00
River Jct., Fla. to Valdosta, Ga	101	(b)	37.50
Jasper, Fla., to Thomasville, Fla	103	(b)	37.50
Green Cove Springs, Fla. to Waycross, Ga	109	(b)	37.50
Jasper, Fla. to Ocala, Fla	127	(a)	16.00
Ocala, Fla. to Jacksonville, Fla	127	(a)	16.00
Live Oak, Fla. to Jacksonville, Fla	127	(a)	16.00
High Springs, Fla. to Valdosta, Ga	122	(b)	42.50
Lake Butler, Fla. to Sanford, Fla	153	(a)	17.00
Lake Butler, Fla. to Lakeland, Fla	159	(a)	17.00
Perry, Fla. to Jacksonville, Fla	162	(a)	18.50
Lake Butler, Fla. to Brunswick, Ga	150	(b)	45.00
Lake Butler, Fla. to Valdosta, Ga	150	(b)	45.00
Lake Butler, Fla. to Quitman, Ga	167	(b)	47.50

(a) Intrastate shipments.
(b) Interstate shipments.

[fol. 262] The same differences and to the same extent, exist with reference to the ability of the Georgia log shipper to attempt to sell and ship his logs to a Florida mill.

There is attached to this complaint, as Exhibit "A," a full comparison of the mileage scales from which the above rates are made, for all distances from 5 miles to 170 miles.

8. That the interstate rates applicable on logs specified in paragraph 6 of this complaint and charged by the defendant railroad company on interstate traffic moving from Florida points to destinations in Georgia are greatly in excess of the Florida intrastate rates published and charged by defendant company on the same commodity from Florida producing points to Florida destinations, for like distances and moving under substantially similar transportation conditions.

9. That the interstate rates on logs from shipping points in Florida to destinations in Georgia are unjust and unreasonable; and, that the charging and receiving of greater compensation for the transportation of logs moving in interstate commerce subject to the provisions of the interstate commerce Act, than is charged and received for the transportation of like property moving in intrastate commerce, under substantially similar transportation conditions, unjustly and unlawfully discriminates against the Georgia Log shippers; that such adjustment is unduly prejudicial and disadvantageous to Georgia interstate shippers, and gives undue preference and advantage to intrastate Florida log shippers.

10. That by reason of the facts stated in the foregoing paragraphs, Georgia shippers have been subjected to the payment of rates for interstate transportation which were when exacted and still are unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act; unjustly discriminatory in violation of Section 2 of said Act and unduly prejudic-al to the interstate shipper and preferential in favor of the intrastate shipper in violation of Section 3 of said Interstate Commerce Act.

[fol. 263] 11. That the intrastate Florida rates charged and received by defendant carrier for the transportation of logs from Florida producing points to destinations in Florida give undue and unreasonable preference and advantage to intrastate shippers in Florida; and are unduly prejudicial and disadvantageous to the interstate shipper in Georgia, and causes undue and unreasonable and unjust discrimination against interstate commerce in the violation of Section 13 of the Interstate Commerce Act.

12. That the rates herein complained of have already been increased since January 1st, 1910.

Wherefore, the complainants pray:

(a) That the defendant carrier may be required to answer the charges herein, and that after due hearing and investigation an order be made requiring said defendant, the Atlantic Coast Line Railroad Company, to cease and desist from the aforesaid violation of the Interstate Commerce Act.

(b) That the Commission determine and prescribe just, reasonable, non-discriminatory and non-prejudicial interstate rates to be observed and charged in the future by the defendant carrier for the transportation of carload shipments of logs, from all points located in the State of Florida to all destinations located in the State of Georgia; that the measure of said rates be no higher than the rates concurrently in effect for the same kind of property, from producing points located within the State of Florida, moving in intrastate commerce, to destinations within the State of Florida.

(c) That such further order or orders be made as the Commission may consider proper in the premises.

Dated at Atlanta, Georgia, April 23rd, 1926.

Georgia Public Service Commission, by James A. Perry, Chairman, E. M. Price, Rate Expert.

Atlanta, Ga., April 23rd, 1926.

[fol. 264] EXHIBIT A TO COMPLAINT

Statement showing comparison of Florida Intrastate rates on logs per car 50,000 lbs. and Interstate Rates between Florida and Georgia points. Both scales published for account Atlantic Coast Line Railroad

Distance, miles	Florida intrastate scale	Florida-Georgia interstate scale	Interstate scale higher
5	$8.55	$12.50	46%
10	8.55	15.00	76%
15	8.55	17.50	104%

Distance, miles	Florida intrastate scale	Florida-Georgia interstate scale	Interstate scale higher
20	8.55	17.50	104%
25	8.55	20.00	133%
30	8.55	20.00	133%
35	8.55	22.50	163%
40	8.55	22.50	163%
45	10.50	25.00	138%
50	10.50	25.00	138%
55	10.50	27.50	161%
60	11.50	27.50	161%
65	11.50	30.00	160%
70	11.50	30.00	160%
75	11.50	32.50	200%
80	11.50	32.50	200%
85	11.50	35.00	233%
90	11.50	35.00	233%
95	13.00	35.00	169%
100	13.00	35.00	169%
110	14.00	37.50	168%
120	16.00	40.00	150%
130	16.00	42.50	165%
140	17.00	42.50	150%
150	17.00	45.00	164%
160	17.00	45.00	164%
170	18.50	47.50	156%

Tariff Authorities:

Florida Intrastate rates, Supplement 29 to ACL Southeastern Tariff No. 5-B; ICC B-2255, effective August 24, 1925.

Florida-Georgia Interstate rates, Agent Glenn's ICC A-415 (Southern Lumber Tariff No. 6), Supplements thereto and reissues thereof.

[fol. 265] [File endorsement omitted]

BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ANSWER

The Answer of the Atlantic Coast Line Railroad Company to the Petition Filed in the Above-styled Proceeding

For answer to said petition this respondent says as follows:

1. Respondent has no reason to doubt the correctness of the allegations contained in paragraph 1.

2. The allegations of paragraph 2 are admitted.

3. Respondent is advised that it is unnecessary for it to answer paragraph 3.

4. The allegations of paragraph 4 are admitted.

5. Respondent asks that reference be made to its tariffs, lawfully published and filed, for verification of the allegations of paragraph 5.

6. Respondent asks that reference be made to its tariffs, lawfully published and filed, for verification of the allegations of paragraph 6.

7. Respondent asks that reference be made to its tariffs, lawfully published and filed, for verification of the allegations of paragraph 7.

8. For answer to paragraph 8, respondent admits that its rates applicable on logs, as specified in paragraph 6 of said petition and charged by it on interstate traffic moving from Florida points to destinations in Georgia, are in excess of the intrastate rates in Florida where hauls are for distances of 170 miles and under.

9. For answer to paragraphs 9, 10, 11 and 12 of said petition, respondent denies that its interstate rates on logs from shipping points in Florida to destinations in Georgia are either unjust or unreasonable. Further answering this re- [fol. 266] spondent avers that to whatever extent there may

be discrimination against interstate shippers or interstate commerce under the rates complained of, such discrimination is not attributable to anything voluntarily done, or omitted to be done by this respondent, or for which this respondent is in any manner responsible, but arises out of conditions over which this respondent has no control. Accordingly, respondent denies that there is, or has been any violation whatever on its part of the Interstate Commerce Act, as amended.

And, having fully answered, respondent prays that it be hence dismissed, etc.

Frank W. Gwathmey, Special Counsel.

[fol. 267] Before Interstate Commerce Commission

[Title omitted]

Order Amending Petition of Intervenor—Sept. 14, 1926

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Jacksonville Traffic Bureau, intervenor herein;

It is ordered, That the intervening petition of Jacksonville Traffic Bureau in this proceeding be, and the same is hereby, amended in accordance with the document hereto attached, marked "Amended Petition for Leave to Intervene";

It is further ordered, That a copy of the amended petition be served upon complainant and defendant; and that a copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 268] Before Interstate Commerce Commission

[Title omitted]

Amended Petition for Leave to Intervene—Sep. 3, '26

Comes now your petitioner, Jacksonville Traffic Bureau, and respectfully represents that it has an interest in the

matters in controversy in the above entitled proceeding, and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

1. That the Jacksonville Traffic Bureau is a corporation, operating without profit, organized and existing under the laws of the State of Florida, with its principal office located at Jacksonville; that it is maintained jointly by the municipality of Jacksonville and the Jacksonville Chamber of Commerce, and has for its object, among other things, the securing and maintaining for the City of Jacksonville of freight rates which are just, reasonable, and non-prejudicial.

2. That your petitioner has among its members a number of plants located at Jacksonville, Florida, and vicinity, which manufacture lumber, crate material and other forest products, and receive their logs over the lines of defendant carrier.

3. That the intrastate rates charged by the defendant carrier for the transportation of logs from stations on its lines in Florida to Jacksonville and vicinity are not unreasonable or otherwise unlawful, and that any increase in these charges would increase the cost of raw materials to an extent which would result in serious injury and damage to said manufacturing plants.

4. That the service rendered by the defendant carrier in the transportation of logs from stations on its lines in Florida to Jacksonville is unlike and dissimilar to the service rendered by said defendant in the transportation of logs from stations on its lines in Florida to points in Georgia, and that a difference in the charges for services rendered under substantially dissimilar circumstances and conditions does not create unjust discrimination.

[fol. 269] 5. That no undue or unreasonable preference or advantage is being given the manufacturing plants at Jacksonville and vicinity, nor are the receivers and shippers of logs in Georgia being subjected to undue or unreasonable prejudice by reason of the fact that the defendant carrier charges different rates for transportation when the service rendered is not substantially similar.

6. That if the Commission should find that unjust discrimination or undue prejudice exists in violation of the provisions of the Interstate Commerce Act, said unjust discrimination or undue prejudice should be removed by reducing the interstate rates charged by the defendant carrier for the transportation of logs from stations on its lines in Florida to points in Georgia.

7. That the position and interest of your petitioner in this proceeding is not to broaden the issues but to maintain the present rates on logs from stations on the lines of the defendant carrier in Florida to Jacksonville and vicinity, and that we do not oppose a proper effort on the part of the complainant to secure just and reasonable rates for Georgia shippers and receivers of logs.

Wherefore said petitioner prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Jacksonville, Florida, September 1, 1926.

Respectfully submitted.

Jacksonville Traffic Bureau, by W. E. Gardner, W. E. Gardner, Manager.

Address: P. O. Box 318, Jacksonville, Fla.

[fol. 270] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER AMENDING PETITION OF INTERVENOR—Sept. 14, 1926

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Southern Pine Association, intervenor herein;

It is ordered, That the intervening petition of Southern Pine Association in this proceeding be, and the same is hereby, amended in accordance with the document hereto attached;

It is further ordered, That a copy of the petition for leave to intervene be served upon complainant and defendant; and that a copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 271] (Corrected)

BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR LEAVE TO INTERVENE—Sep. 3, '26

Comes now your petitioner, Southern Pine Association, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding, and for the grounds for the proposed intervention says:

1. That said petitioner, Southern Pine Association, maintains its headquarters at New Orleans, La.

2. That members of said Southern Pine Association operating in the states of Alabama, Florida and Georgia, do ship and cause to be shipped, logs and products of logs, in both interstate and intrastate commerce over line of carrier defendant in this proceeding. That petitioner's activities embrace the protection of the interests of its subscribers in all matters pertaining to Traffic and Transportation.

3. And that, further, for the purpose of presenting to both the Interstate Commerce Commission and the Georgia Public Service Commission (complainants in this proceeding) this Association's attitude with respect to and interest in the several allegations set forth in the complaint, our views and opinions with regard to each individual paragraph as embodied therein:

With paragraphs 1, 2, 4, 5, 6, 7 and 8 we are in accord.

With paragraphs 3, 9, 11 and 12, we are in accord except as to alleged discrimination and undue preference.

With paragraph 10, we are in accord except as to alleged violations of Sections 2 and 3 of the Act.

Wherefore said Southern Pine Association prays leave to intervene and be treated as a party thereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument if oral argument be granted.

Respectfully submitted.

Southern Pine Association, by (Signed) A. G. T. Moore, Traffic Manager.

Dated at New Orleans, La., September 1, 1926.

(This petition issued in lieu of petition previously filed with the Interstate Commerce Commission dated August 11, 1926.)

[fol. 272] Before Interstate Commerce Commission

[Title omitted]

Order Amending Petition of Intervenor—Sept. 14, 1926

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Southern Cypress Manufacturers' Association, intervenor herein,

It is ordered, That the intervening petition of Southern Cypress Manufacturers' Association in this proceeding be, and the same is hereby, amended in accordance with the document hereto attached, marked "Amended Petition for Leave to Intervene";

It is further ordered, That a copy of the amended petition be served upon complainant and defendant; and that a copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 273] Before Interstate Commerce Commission

[Title omitted]

Amended Petition for Leave to Intervene—Sep. 13, '26

Comes now the petitioner, the Southern Cypress Manufacturers Association, and respectfully represents that it

has an interest in the matters in controversy in the above-entitles proceeding and desire- to intervene in and become a party to said proceeding, and for grounds of the proposed intervention say-:

1. That your petitioner is an Association of Manufacturers and Shippers of Logs in carloads with office in Jacksonville, Florida.

2. That the complainant in this case brings into comparison the intrastate rates in Florida, where we have Logging interests, and represent these interest- in all traffic matters. We are directly interested in the Log rates established between points within the state of Florida and have represented these interests in many instances in rate adjustments which are now being made subject of this complaint.

[fol. 274] 3. That Petitioner is concerned in the intrastate rates between Georgia points and between Florida points and is opposed to the establishment of the interstate rates as prayed for by the Petitioner from points in Florida to points in Georgia on a lower basis and would prevail on relatively similar intrastate traffic between Georgia points.

Wherefore said Southern Cypress Manufacturers Association prays *to* leave to intervene and be treated as a party with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument if oral argument is granted.

Respectfully submitted.

Southern Cypress Manufacturers' Association, by G. W. Owen, Traffic Manager.

Dated at Jacksonville, Fla., September 10, 1926.

[fol. 275] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER PERMITTING INTERVENTION—July 3, 1926

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Elberta Crate Company;

It is ordered, That the said Elberta Crate Company be, and it is hereby, permitted to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument, is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervenor to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the intervening petition be served upon complainant and defendants; and that a copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 276] Letter-head of Elberta Crate Company

BEFORE THE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION OF ELBERTA CRATE COMPANY, BAINBRIDGE, GEORGIA, FOR LEAVE TO INTERVENE

Comes now your petitioner, Elberta Crate Company, Bainbridge, Ga. and respectfully represents that it has an interest in the matter in controversy in the above entitled proceedings, and moves that said company be allowed to intervene in and become a party to said proceedings, and for cause of intervention says:

1

That the Elberta Crate Company is a corporation organized and existing under the laws of the State of Georgia, with its principal office and factory located in the city of Bainbridge, Ga.

That said company is engaged in the manufacture of wooden crates and crate materials used in the shipments of fruits and vegetables, and in the sale and distribution thereof throughout the states of Georgia, Florida, and elsewhere.

2

That in the purchase and transportation of logs used in the manufacture of crates and crate material, it actively competes with manufacturers and shippers of like commodities located at various points on the Atlantic Coast Line Railroad in Florida, which said competitors are, under the present rates of the Atlantic Coast Line Railroad, enabled [fol. 277] to draw logs into their Florida manufacturing points at rates materially less, distances and transportation facilities considered, than the Elberta Crate Company is permitted to do.

Your petitioner is accordingly interested to a very vital extent in whatever the proceeding may develop as affecting the existing rate structure applicable to shipment of logs moving via the Atlantic Co-st Line Railroad between points in Florida as contrasted with similar movements via the Atlantic Coast Line Railroad from points in Florida to points in Georgia.

3

Wherefore said Elberta Crate Company prays leave to intervene and be treated as a party thereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief, and at the oral argument if oral argument is granted.

Dated at Bainbridge, Ga., July 2nd, 1926.

Elberta Crate Company, by J. M. Simmons, President.

Address: J. M. Simmons, President Elberta Crate Company, Bainbridge, Ga.

[fol. 278] Before Interstate Commerce Commission

[Title omitted]

Order Permitting Intervention—July 26, 1926

Upon consideration of the record in the above-entitled peoceeding and application filed on behalf of Jacksonville Traffic Bureau,

It is ordered, That the said Jacksonville Traffic Bureau be, and it is hereby permitted to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervenor to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the intervening petition be served upon complainant and defendant; and that a copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 279] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR LEAVE TO INTERVENE

Comes now your petitioner, Jacksonville Traffic Bureau, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding, and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

1. That the Jacksonville Traffic Bureau is a corporation, operating without profit, organized and existing under the laws of the State of Florida, with its principal office located at Jacksonville; that it is maintained jointly by the municipality of Jacksonville and the Jacksonville Chamber of Commerce, and has for its object, among other things, the securing and maintaining for the City of Jacksonville of freight rates which are just, reasonable, and non-prejudicial.

2. That your petitioner has among its members a number of plants located at Jacksonville, Florida, and vicinity, which manufacture lumber, crate material and other forest

products, and receive their logs over the lines of defendant carrier.

3. That any increase in the cost of raw material to the said manufacturing plants caused by an increase in the cost of transportating their logs, will result in serious injury and damage thereby.

4. Wherefore said petitioner prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-[fol. 279½] examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Jacksonville, Florida, July 24, 1926.

Respectfully submitted.

Jacksonville Traffic Bureau, by W. E. Gardner. W. E. Gardner, Manager.

Address: P. O. Box 318, Jacksonville, Fla.

[fol. 280] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER PERMITTING INTERVENTION

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Georgia-Florida Saw Mill Association,

It is ordered, That the said Georgia-Florida Saw Mill Association be, and it is hereby, permitted to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervenor to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the intervening petition be served upon complainant and defendant; and

that a copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 281] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR LEAVE TO INTERVENE

Comes now your Petitioner, Georgia-Florida Saw Mill Association, and respectfully represents that it has an interest in the matter in controversy in the above entitled proceedings, and desires to intervene in and become a party thereto, and for grounds for the proposed intervention, says:

1. That petitioner is a corporation organized under the laws of the State of Georgia, with its principal office in Jacksonville, Florida.

2. That members of Georgia-Florida Saw Mill Association operating in Georgia, Florida and Alabama, ship and cause to be shipped, logs and the products of logs, in both Interstate and Intrastate Commerce, over line of Carrier defendant in this proceeding.

[fol. 282] 3. That Petitioner's activities embrace the protection of the interests of its membership in matters pertaining to traffic and transportation.

Wherefore said Georgia-Florida Saw Mill Association prays leave to intervene and to be treated as a party hereto, with the right to have notice of and to appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard in person or by Counsel, on brief and at oral argument, if oral argument is granted.

Respectfully submitted.

Georgia-Florida Saw Mill Association, by J. S. Farish, Traffic Manager.

Dated at Graham Building, Jacksonville, Florida, August 3, 1926.

Docket No. 18364

BEFORE THE INTERSTATE COMMERCE COMMISSION

Motion filed at Hearing 10-21-26. R. M. Brown Examiner

Title Omitted

INTERVENER'S MOTION TO DISMISS

Come now the intervenors, Wilson Cypress Company, Brooks-Scanlon Corporation, Putnam Lumber Company, Cummer Cypress Company, Jacksonville Traffic Bureau, Georgia-Florida Saw Mill Association, ~~Georgia~~ Roofers Manufacturers ~~Association~~, Southern Cypress Manufacturers Association, Southern Pine Association, Club of Georgia Savannah Traffic Bureau and Florida Railroad Commission, and respectfully move the Commission to dismiss this proceeding upon the following grounds severally:

1. Neither the Complainant nor the supporting Intervenors have submittee evidence sufficient to constitute a cause of action within the power of this Commission to remedy.

2. The allegations of the complaint have not been sustained by the Complainant nor by the supporting Intervenors.

Submission of this motion is without predudice to the right of these ~~movements~~ movants to submit material, relevant and competent evidence as to any and all issues in this proceeding if and after the Interstate Commerce Commission shall have considered and disposed of this motion, and such right is hereby reserved by these movants.

And each and every the undersigned hereby certify that this motion is not made for the purpose of delay, and that, in their opinion, the same is well founded in Law.

Wilson Cypress Company
By H. P. Osborne and Chas. E. Cotterill
attorney
Brooks Scanlon Corporation
By Edward P. Lamborn and Geo. L. Rusterfeld
attorney
Putnam Lumber Company
By H. Adams & Chas. E. Cotterill
attorney
Jacksonville Traffic Bureau
By J. O. Cassidy
attorney
Georgia Florida Sawmill Association
By W. Walsh
attorney
Roofers Manufacturers Club of Georgia
~~Georgia Roofers Association~~
By W. Walsh
attorney
Southern Cypress Manufacturers Association
By R. E. Michel A.T.M.
Southern Pine Association
By A. G. Moore
attorney

Cummer Cypress Co.
By E. W. Mitchell
attorney
Chas. E. Cotterill
Savannah Traffic Bureau
By E. B. Gaines
By J. McGinnis

BEFORE THE INTERSTATE COMMERCE COMMISSION

Motion [illegible] R. M. [illegible] Examiner

Title Omitted

INTERVENER'S MOTION TO DISMISS

Come now the intervenors, Wilson Cypress Company, Brooks-Scanlon Corporation, Putnam Lumber Company, Cummer Cypress Company, Jacksonville Traffic Bureau, Georgia-Florida Saw Mill Association, ~~Georgia~~ Roofers ~~Association~~ Manufacturers' Club of Georgia, Savannah Traffic Bureau, Southern Cypress Manufacturers Association, Southern Pine Association, and Florida Railroad Commission, and respectfully move the Commission to dismiss this proceeding upon the following grounds severally:

1. Neither the Complainant nor the supporting Intervenors have submittee evidence sufficient to constitute a cause of action within the power of this Commission to remedy.

2. The allegations of the complaint have not been sustained by the Complainant nor by the supporting Intervenors.

Submission of this motion is without predudice to the right of these ~~movements~~ movants to submit material, relevant and competent evidence as to any and all issues in this proceeding if and after the Interstate Commerce Commission shall have considered and disposed of this motion, and such right is hereby reserved by these movants.

And each and every the undersigned hereby certify that this motion is not made for the purpose of delay, and that, in their opinion, the same is well founded in Law.

Wilson Cypress Company
By H. P. Osborne and Chas. E. Cotterill
attorney
Brooks Scanlon Corporation
By Edward P. Lamborn and Geo. L. Rutherford
attorney
Putnam Lumber Company
By H. Adams & Chas. E. Cotterill
attorney
Jacksonville Traffic Bureau
By J. O. Cassidy
attorney
Georgia Florida Sawmill Association
By W. Smith
attorney
Roofers Manufacturers Club of Georgia
~~Georgia Roofers Association~~
By W. Smith
attorney
Southern Cypress Manufacturers Association
By R. E. Michel a. T. M.
Southern Pine Association
By A. G. Moore
attorney
Florida Railroad Commission
By Fred H. Davis
attorney

Cummer Cypress Co.
By E. W. Mitchell
attorney
Chas. E. Cotterill
Savannah Traffic Bureau
By E. B. Gaines
By [illegible]

284

[fol. 283] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER AMENDING PETITION OF INTERVENOR—Oct. 16, 1926

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Georgia-Florida Saw Mill Association, intervenor herein:

It is ordered, That the intervening petition of Georgia-Florida Saw Mill Association in this proceeding be, and the same is hereby, amended in accordance with the document hereto attached, marked "Second Amended Petition for Leave to Intervene."

It is further ordered, That a copy of the amended petition be served upon complainant and defendant; and that a copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. (Seal.)

(Here follows intervener's motion to dismiss, side folio 284)

[fol. 285] BEFORE THE INTERSTATE COMMERCE COMMISSION

Received at Hearing 10/20/26. F. C. H.

[Title omitted]

PETITION FOR LEAVE TO INTERVENE

Comes now your Petitioner, Roofer Manufacturers Club of Georgia, and respectfully represents that it has an interest in the matter in controversy in the above entitled proceedings, and desires to intervene and become a party thereto, and for grounds for the proposed intervention, says:

1. That petitioner is a voluntary association of lumber manufacturers of South Carolina, Georgia and Alabama, thirty-nine of such manufacturers operating in Georgia, with office of its Secretary at Madison, Ga.

2. That members of Roofer Manufacturers Club of Georgia, ship and cause to be shipped, logs and the products

of logs, in both interstate and intrastate commerce, over line of carrier, parties to these proceedings.

3. That the establishment of interstate rates prayed for in paragraph 12 (b) of complaint will result in materially lower rates for distances 15 to 170 miles on interstate traffic from points in Florida to points in Georgia than at present obtain on Georgia intrastate traffic to which your petitioner is opposed.

4. That petitioner is concerned in the measure of interstate rates (rates from points in Florida to points in Georgia) involved in this complaint.

5. That it is not the purpose of this intervention to broaden the issues herein.

Wherefore, said Roofer Manufacturers Club of Georgia prays leave to intervene and to be treated as a party hereto, with the right to have notice of and to appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by Counsel, on brief and at oral argument, if oral argument is granted.

Respectfully submitted.

Roofer Manufacturers Club of Georgia, C. R. ——,
its Secretary, by J. S. Farish, its Attorney.

Dated at Jacksonville, Fla., October 18, 1926.

[fol. 286] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION OF PUTNAM LUMBER COMPANY FOR LEAVE TO INTERVENE

Comes now your petitioner, Putnam Lumber Company, and respectfully represents that it has an interest in the matter and things involved in the above entitled proceeding, and desires to intervene in, and become a party to, said proceeding, and for grounds of its proposed intervention shows:

1. That your petitioner, Putnam Lumber Company, is a corporation duly organized and existing under the laws of

the State of Florida, with its principal office in Duval County, Florida.

That your petitioner was chartered by the State of Florida on to-wit, December 31, 1924, and on said date acquired all the assets and property of Putnam Lumber Co., a corporation organized and existing under the laws of the State of Wisconsin, the stockholders of your petitioner being then and there the identical persons owning and holding the stock in said Wisconsin corporation, each of said stockholders owning a like number of shares of the stock of your petitioner and of said Wisconsin corporation, there being no change of beneficial interest accomplished by the transfer of said assets and property.

2. That your petitioner is the owner of to-wit, 650,000,000 feet of pine timber and to-wit, 350,000,000 feet of cypress [fol. 286½] timber, standing and being in the Counties of Dixie, Taylor, La Fayette, Alachua, Gilchrist, Union, Volusia and Flagler, in the State of Florida, on the value of more than eight million dollars; that to-wit, more than three-fourths in amount and in value of said timber was acquired by said Wisconsin corporation, the predecessor of your petitioner, long prior to the year 1918, to-wit, in the year 1903, and the remainder of said timber was acquired by the said predecessor of your petitioner and your petitioner since the year 1918.

3. That all of said timber at all times herein mentioned was and still is accessible from and tributary to the existing line of railroad of the Atlantic Coast Line Railroad Company and to no other line of railroad.

4. That your petitioner now is engaged in the operation of two sawmill plants at Jacksonville, Florida, the one leased from the Cummer Lumber Company, situate at a point called Milldale in the suburbs of said city of Jacksonville and known as the Cummer Lumber Company mill, and the other owned by your petitioner and situate on the Atlantic Coast Line Railroad on McGirt's Creek, in said city, and known as the Ortega plant of your petitioner.

5. That your petitioner is now engaged in the logging of said timber and the shipment of the logs cut therefrom via the Atlantic Coast Line Railroad, from the town of

Cross City and near by, in said Dixie County, Florida, to the sawmill plants mentioned above of your petitioner, and the manufacture of such logs into lumber, shingles, laths and other lumber and timber products, and the distribution of such products by water and by rail throughout the Eastern portion of the United States, and by water to many foreign countries.

6. That said sawmills and plants have been operated continuously by your petitioner and its said predecessor since the year 1918, and the annual output of said mills is to-wit more than one hundred million feet.

7. That your petitioner has no sawmills or plants other than its sawmills and plants at Jacksonville above mentioned, and no timber other than the timber above mentioned.

[fol. 287] 8. That the logs cut from such timber are now moving and for a long time prior to the filing of the petition herein have moved from the said town of Cross City and near by, to the said plants of your petitioner at Jacksonville, under a contract made by your petitioner with the Atlantic Coast Line Railroad Company to transfer such logs over its road when loaded by your petitioner in trainload lots of not less than forty cars every day upon the basis of $16.00 per carload of 50,000 lbs. minimum weight and a proportionate increase for any additional load over and above such minimum weight.

That said rates are determined on a mileage basis and in accordance with the established tariff duly published by the Atlantic Coast Line Railroad Company; that said rates have prevailed for many years without alteration save such horizontal alterations as have been made by regulatory bodies in commodity rates generally.

9. That your petitioner and its said predecessor since 1918 have expended more than $600,000.00 in the construction of the said Ortego plant and in the improvement and repair of said Cummer Lumber Company plant, and in so doing relied upon said rates so published by said Atlantic Coast Line Railroad as aforesaid.

10. That if such Intra-State rates are materially increased the value of your petitioner's said investment in

plants at Jacksonville will be practically destroyed and the business built up by your petitioner and its predecessor during the eight years last past will be disrupted, to the great injury of your petitioner.

11. That the present Intra-State rates for the transportation of logs as published by said Atlantic Coast Line Railroad between stations and points in Florida are compensatory.

12. That neither now nor for many years last past has there been any substantial movement of logs Interstate from Georgia to Florida or from Florida to Georgia; that there are not now nor has there been for many years any [fol. 288] substantial number of logs available for shipment in Interstate commerce from Georgia to Florida, or for shipment in Interstate commerce from Florida to Georgia.

13. That said Intra-State rate does not unjustly discriminate against Interstate commerce.

14. That it is not for the purpose of this intervention to broaden the issues in this proceeding.

Wherefore your petitioner respectfully prays leave to intervene and to appear as a party hereto, with the right to have notice of and to appear at the taking of testimony, produce and cross-examine witnesses, and to be heard in person or by counsel in brief and at the oral argument, if oral argument is granted.

Jacksonville, Florida, October 15, 1926.

Putnam Lumber Company, by M. L. Fleishel, President. Cooper, Knight, Adair, Cooper & Osborne, Attorneys, by H. P. Adair.

Attest: C. L. Effinger, Secretary. (Corporate Seal.)

[fol. 289] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR LEAVE TO INTERVENE

Comes now your petitioner, Cummer Cypress Company, and respectfully represents that it has an interest in the

matters in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention say:

I. That the petitioner is a corporation, organized under the laws of the State of Florida, with its principal place of business at Jacksonville, Florida, and is engaged in the business of manufacturing lumber.

II. The petitioner operates a saw and crate mill at Lacoochee, Florida, and ships logs from its timberlands over the defendant carrier's railroad from Otter Creek, Florida, to Lacoochee, Florida, a distance of seventy-seven miles, paying the rates therefor as now established by published schedules, and, that the petitioner is interested in the above entitled proceedings to the extent that said proceedings may effect the present scale of freight rates on logs transported by the defendant carrier between said points of Otter Creek and Lacoochee, Florida.

III. That if permission to intervene herein is granted it is not the purpose of the petitioner to introduce evidence which will unduly broaden the issues raised in the complaint.

Wherefore said Cummer Cypress Company prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross examine witnesses, and be heard in per-
[fol. 290] son or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Jacksonville, Florida, October 11th, 1926.

Cummer Cypress Company, by A. G. Cummer, President, 451 St. James Building, Jacksonville, Florida. E. W. Mitchell, 905 Florida National Bank Building, Jacksonville, Florida; Chas. E. Cotterill, 505 Grant Bldg., Atlanta, Ga., Attorneys for Petitioner.

[fol. 291] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION OF WILSON CYPRESS COMPANY FOR LEAVE TO INTERVENE

Comes now your petitioner, the Wilson Cypress Company, and respectfully represents that it has an interest in the matter and things involved in the above entitled proceeding, and desires to intervene in, and become a party to, said proceeding, and for grounds of its proposed intervention shows:

1. That your petitioner, the Wilson Cypress Company, is a corporation duly organized and existing under the laws of the State of Florida, with its principal office and place of business in the City of Palatka, County of Putman, Florida.

That continuously since the year 1894 your petitioner has maintained and operated its sawmill and plant in said City of Palatka on the St. Johns River for the manufacture of cypress lumber, shingles and laths; that in the year 1922 your petitioner enlarged its sawmill and plant at Palatka at a cost and expense of more than Five Hundred Thousand [fol. 292] ($500,000.00) Dollars in order to increase the capacity of said mill and plant and provide facilities for manufacturing the cypress timber owned by your petitioner and standing on lands in Dixie, Lafayette, Taylor Counties, State of Florida, and your petitioner now has invested in its Palatka mill, plant and logging facilities upwards of one million ($1,000,000) dollars.

That your petitioner has no mill or plant in Dixie, Lafayette, Taylor Counties or elsewhere, other than its mill and plant at Palatka, that a primary and essential reason or consideration for the decision by your petitioner to enlarge and increase its mill, plant and logging facilities at Palatka in the year 1922 was the then prevailing railroad freight rate for the transportation to Palatka of its timber in Dixie, Lafayette and Taylor Counties, which rates are the same as those hereinafter mentioned, and that your petitioner would not have so increased or enlarged said mill and plant if a material increase in said rates had then been anticipated or contemplated.

2. That in 1922 at the time of the enlargement of its sawmill and plant, your petitioner was the owner of more than three hundred million (300,000,000) feet of standing cypress timber upon said lands in Dixie, Lafayette, Taylor Counties, and it is now the owner of approximately two hundred fifty to three hundred million (250,000,000 to 300,000,000) feet of such cypress timber.

That your petitioner commenced the cutting and hauling of said cypress timber from said lands in Dixie, Lafayette and Taylor Counties in May 1923; that such timber was then and now is accessible from and tributary to the existing line of railroad of the Atlantic Coast Line Railroad Company, and at the present time is not accessible or tributary to the line of any other railroad; that from May 1923 to July 1, 1926, your petitioner hauled and removed the [fol. 293] timber cut by it from said lands by delivering the same on sidings at Oldtown in Dixie County, and since July 1st, 1926 has hauled and removed said timber from said lands by delivering the same on sidings at Hines in Dixie County; that such timber has been moved from Oldtown up to July 1st, 1926, and since July 1st, 1926 from Hines, to its mill and plant at Palatka under contract made by your petitioner with said Atlantic Coast Line Railroad Company to transport over its line such timber when cut into logs and moved in train load lots of not less than thirty (30) cars every other day to its mill at Palatka for Thirteen (13.00) Dollars per car of fifty thousand (50,000#) pounds from the sidings at Oldtown, and Sixteen ($16.00) Dollars per car of 50,000 pounds from the sidings at Hines. That said log rates are determined on a mileage basis and are in accordance with the established tariff fixing rates for transportation of logs between such points of shipment within the State of Florida, and such rates were duly fixed and approved by the Railroad Commission of the State of Florida.

3. That your petitioner relied upon said tariff rates on logs so fixed and approved by the Railroad Commission of Florida in the enlargement and extension of its mill and plant in the year 1922.

That if said intrastate rates are materially increased the value of its mill and plant and logging facilities at Palatka

will be practically destroyed, and its investment and industry made of little value after it has cut and manufactured the only other cypress timber owned by it, other than that timber standing in Dixie, Lafayette and Taylor Counties, and that the only other timber owned or held by your petitioner, other than the other mentioned timber in Dixie, Lafayette and Taylor Counties is approximately one hundred fifty million (150,000,000) feet of Cypress timber owned by it and standing upon lands tributary to the St. Johns River.

4. That the present intrastate rates for the transportation of logs between stations and points in Florida produces a profit to the railroad company and are not discriminatory or otherwise unlawful.
[fol. 294] That there are practically no logs or timber in the State of Georgia now available for shipment from that State into the State of Florida, and only a very small amount of timber, if any, now standing in the State of Florida is owned by persons having mills or lumber plants in the State of Georgia; that the greater part of the standing timber in the State of Florida is owned by persons and corporations operating mills and plants exclusively in the State of Florida.

5. That under the present intrastate tariff rates for logs, trade and industries have been built up by your petitioner and others in the State of Florida, and such trade and industries will be disrupted and largely destroyed by any material increase in the present log rates, and that the disruption of such trade and industry will work great loss upon those persons dependent upon the continuance of such trade and industries, including the employees engaged in such industries and their families.

6. That it is not the purpose of this intervention to broaden the issues in this proceeding.

Wherefore your petitioner respectfully prays leave to intervene and to appear as a party hereto, with the right to have notice of, and to appear at the taking of testimony, produce and cross examine witnesses, and be heard in per-

son or by counsel, on brief and at the oral argument, if oral argument is granted.

Wilson Cypress Company, Petitioner, by F. H. Wilson, General Manager. Attest: A. A. Corson, Secretary. (Corporate Seal Wilson Cypress Company, Palatka, Fla.) Cooper, Knight, Adair, Cooper & Osborne, Counsel for Petitioner.

Dated at Palatka, Florida, October 14th, 1926.

[fol.295] Before Interstate Commerce Commission

[Title omitted]

Second Amended Petition for Leave to Intervene

Comes now your Petitioner, Georgia-Florida Saw Mill Association, and respectfully represents that it has an interest in the matter in controversy in the above entitled proceedings, and desires to intervene and become a party thereto, and for grounds for the proposed intervention, says:

1. That Petitioner is a corporation organized under the laws of the State of Georgia, with its principal office at Jacksonville, Florida.

2. That members of Georgia-Florida Saw Mill Association operating in Georgia, Florida and Alabama, ship and cause to be shipped, logs and the products of logs, in both interstate and intrastate commerce, over line of carrier defendant in this proceeding.

3. That the establishment of interstate rates prayed for in paragraph 12 (b) of complaint will result in materially lower rates for distances 15 miles to 170 miles on interstate traffic from points in Forida to points in Georgia than at present obtain on Georgia intrastate traffic to which your petitioner is opposed.

4. That the level of Florida Intrastate rates is involved as evidenced by paragraph 8 of complaint and as further evidenced by averment of intervening carriers, viz: Seaboard Air Line Railway Company, Central of Georgia Rail-

way Company, Southern Railway Company and Georgia, Southern & Florida Railway Company in paragraph 2, page 2, of said carriers petition for leave to intervene.

[fol. 296] 5. That petitioners's activities embracing the protection of the interests of its membership in matters pertaining to traffic and transportation, your petitioner is concerned in the measure of both state and interstate rates involved in this complaint.

6. That it is not the purpose of this intervention to broaden the issues herein.

Wherefore said Georgia-Florida Saw Mill Association prays leave to intervene and to be treated as a party hereto, with the right to have notice of and to appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by Counsel, on brief and at oral argument, if oral argument is granted.

Respectfully submitted.

Georgia-Florida Saw Mill Association, by J. S. Farish, Traffice Manager.

Dated at Graham Bldg., Jacksonville, Florida, October 11, 1926.

[fol. 297] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER PERMITTING INTERVENTION—Aug. 9, 1926

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Southern Cypress Manufacturers Association;

It is ordered, That the said Southern Cypress Manufacturers Association be and it is hereby, permitted to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervenor to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the intervening petition be served upon complainant and defendant; and that a copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 298] [File endorsement omitted]

BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR LEAVE TO INTERVENE—Filed Aug. 9, 1926

Comes now the petitioner, the Southern Cypress Manufacturers Association, and respectfully represents that it has an interest in the matters in controversy in the above-entitles proceeding and desire to intervene in and become a party to said proceeding, and for grounds of the proposed intervention say:

1. That your petitioner in an Association of Manufacturers and Shippers of Logs in carloads with office in Jacksonville, Florida.

2. That the complainant in this case brings into comparison the intrastate rates in Florida, where we have Logging interests, and represent these interests in all traffic matters. We are directly interested in the Log rates established between points, within the state of Florida and have represented these interests in many instances in rate adjustments which are now being made subject of this complaint.

[fol. 299] Wherefore said Southern Cypress Manufacturers Association prays to leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument if oral argument is granted.

Respectfully submitted.

Southern Cypress Manufacturers Association, by G. W. Owen, Traffic Manager.

Dated at Jacksonville, Fla., August 6, 1926.

[fol. 300] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER PERMITTING INTERVENTION—Aug. 14, 1926

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Southern Pine Association,

It is ordered, That the said Southern Pine Association be and it is hereby, permitted to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervenor to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the intervening petition be served upon complainant and defendant; and that a copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 301] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR LEAVE TO INTERVENE

Comes now your petitioner, Southern Pine Association, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding, and for the grounds for the proposed intervention says:

1. That said petitioner, Southern Pine Association, maintains its headquarters at New Orleans, La.

2. That members of said Southern Pine Association operating in Alabama, Florida and Georgia, ship and cause to be

shipped, Logs and the products of Logs, in both Interstate and Intrastate Commerce, over line of Carrier defendant in this proceeding. That Petitioner's activities embrace the protection of the interests of its subscribers in matters pertaining to Traffic and Transportation.

Wherefore said Southern Pine Association prays leave to intervene and be treated as a party thereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument if oral argument be granted.

Respectfully submitted.

Southern Pine Association, by A. G. T. Moore, A. G. T. Moore, Traffic Manager.

Dated at New Orleans, La., August 11, 1926.

[fol. 302] Before Interstate Commerce Commission

[Title omitted]

Order Permitting Intervention—Aug. 17, 1926

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company and Georgia Southern & Florida Railway Company,

It is ordered, That the said Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company, and Georgia Southern & Florida Railway Company be and they are hereby, permitted to intervene and be treated as parties hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervenors to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the intervening petition be served upon complainant and defendant; and that a

copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 303] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION OF INTERVENTION ON BEHALF OF SEABOARD AIR LINE RAILWAY COMPANY, CENTRAL OF GEORGIA RAILWAY COMPANY, SOUTHERN RAILWAY COMPANY, AND GEORGIA SOUTHERN & FLORIDA RAILWAY COMPANY

Come now the Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company, and Georgia Southern & Florida Railway Company and respectfully represent that they have an interest in the matters and things involved in the above-entitled [fol. 304] proceeding and desire to intervene in and become parties to said proceeding, and for grounds of intervention your petitioners show:

1. Petitioners are common carriers by railroad and as such are engaged, according as their respective lines are located, in the transportation of logs in interstate commerce between points in the State of Florida, on the one hand, and points in the State of Georgia, on the other, as well as in the intrastate transportation of such traffic within the States of Georgia and Florida, respectively, and, as such common carriers, petitioners have an interest in the general level of the rates, both interstate and intrastate, in said territories including such rates as may be established, or may be required to be established, by the Atlantic Coast Line Railroad Company, defendant in this case, for application over the lines of said company,

2. That petitioners have been and are opposed to the establishment and maintenance by said Atlantic Coast Line Railroad Company of the rates now maintained by it for intrastate application on logs within the State of Florida,

and consider these rates to be unduly and unreasonably low and detrimental to the interests of these petitioners; and that petitioners are opposed to the continuance of the said intrastate rates in Florida or to the adoption of these rates for interstate application between points in Florida and points in Georgia, via the lines of the Atlantic Coast Line [fol. 305] Railroad Company or otherwise, and whether for the purpose of establishing reasonable maximum rates under Section 1 of the Act, or for the purpose of removing undue discrimination as complained of in the complaint filed in this proceeding;

3. That it is not the purpose of this intervention to broaden the issues herein.

Wherefore said petitioners pray leave to intervene and be treated as parties hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and to be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Seaboard Air Line Railway Company, Central of Georgia Railway Company, by Frank W. Gwathmey, Frank W. Gwathmey, Attorney for said Companies. Southern Railway Company, Georgia Southern & Florida Railway Company, by Charles J. Rixey, Charles J. Rixey, Attorney for said Companies.

Dated at Washington, D. C., August 11, 1926.

[fol. 306] Before Interstate Commerce Commission

[Title omitted]

Order Permitting Intervention—Sept. 2, 1926

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of The American Short Line Railroad *Company,*

It is ordered, That the said The American Short Line Railroad *Company* be, and it is hereby, permitted to intervene and be treated as a party hereto, with the right to

have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervenor to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the intervening petition be served upon complainant and defendant; and that a copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 307] [File endorsement omitted]

BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR LEAVE TO INTERVENE—Filed Sept. 2, 1926

Comes now your petitioner, the American Short Line Railroad Association, and respectfully represents that it has an interest in the above entitled proceedings and desires to intervene and become a party to said proceedings, and for grounds of the proposed intervention state:

I

Intervenor is a voluntary Association of several hundred carriers, commonly called Short Line Railroads, as member lines, with its principal offices and place of business at 1319 F Street, N. W., International Building, Washington, D. C., of which Mr. Bird M. Robinson is President and Mr. T. F. Whittelsey Secretary and with offices and place of business in Southern Territory at 101 Marietta Street, Atlanta, Ga., of which Mr. John A. Streyer is Traffic Manager.

II

The member lines of intervenor as shown below are common carriers by railroad and as such are engaged, according

as their respective lines are located, in the transportation of logs between points in the State of Florida, points in the State of Georgia, as well as between points in the State of Florida on the one hand and points in the State of Georgia on the other, and as such common carriers, intervenor as a representative of the member lines, has an interest in the general level of the rates, both interstate and intrastate, in said territories including such rates as may be established or may be required to be established, by the Atlantic Coast Line Railroad Company, defendant in this case, for application over the lines of said company;

III

That petitioners have been and are opposed to the establishment and maintenance *of* said Atlantic Coast Line Railroad Company of the rates now maintained by it for intrastate application on logs within the State of Florida, and consider these rates to be unduly and unreasonably low and detrimental to the interests of these petitioners; and that petitioners are opposed to the continuance of the said intrastate rates in Florida or to the adoption of these rates for interstate application between points in Florida and points in Georgia, via the lines of the Atlantic Coast Line Railroad Company, or otherwise, and whether for the purpose of establishing reasonable maximum rates under Section 1 of the Act, or for the purpose of removing undue discrimina-
[fol. 308] tion as complained of in the complaint filed in this proceeding:

IV

That it is not the purpose of this intervention to broaden the issues herein.

Wherefore said petitioners pray leave to intervene and be treated as parties hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and to be heard in person or by counsel upon brief and at oral argument, if oral argument is granted.

The American Short Line Railroad Company, by
J. A. Streyer, Traffic Manager.

Dated at Atlanta, Ga., August 31st, 1926.

Birmingham, Columbus & St. Andrews Ry.,
Bowdon Railway,
Collins & Glennville Ry. Company,
Elberton & Eastern Railroad,
Fellsmere Railroad,
Flint River, & Northeastern Railroad,
Florida, Central & Gulf Railway,
Gainesville & Northwestern Railroad Co., (Lewis Sanders & Sidney Smith, Recrs.),
Georgia & Florida Railway (John Skelton Williams, Recr.),
Georgia, Ashburn, Sylvester & Camilla Ry. Company,
Georgia, Florida & Alabama Railway,
Georgia Northern Railway,
Greene County Railroad,
Live Oak, Perry & Gulf Railroad,
Louisville & Wadley Railroad Co.,
Macon, Dublin & Savannah R. R. Co.,
Marianna & Blountstown Railroad,
Sandersville Railroad Company,
Savannah & Atlanta Railway, (C. E. Gay, Jr., Recr.),
Savannah & Statesboro Railway,
Sherwood Railway,
Statesboro Northern Railway, (G. & F. Ry., John Skelton Williams, Recr., lessee),
Sylvania Central Ry. Co.,
Talbotton Ry. Company,
Tallulah Falls Ry. Co., (J. F. Gray, Recr.),
Tampa & Gulf Coast R. R. Co.,
Tampa & Jacksonville Ry.,
Tavares & Gulf Railroad,
Union Point & White Plains R. R.,
Wadley Southern Ry. Co.,
Washington & Lincolnton Ry.,
Waycross & Southern R. R. Co.,
Wrightsville & Tonnille R. R. Co.

[fol. 309] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER PERMITTING INTERVENTION—Sept. 29, 1926

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Brooks-Scanlon Corporation,

It is ordered, That the said Brooks-Scanlon Corporation be and it is hereby, permitted to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervenor to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the intervening petition be served upon complainant and defendant; and that a copy of this order be served upon each of the parties to this case.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 310] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR LEAVE TO INTERVENE

Comes now your petitioner, Brooks-Scanlon Corporation, and respectfully represents that it has an interest in the matter in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding and for grounds of the proposed intervention says:

I

Your petitioner, Brooks-Scanlon Corporation, is and at all the times hereinafter referred to has been a corporation

duly organized and existing under the laws of the State of Delaware.

The nature of its business ever since the year 1913 has been cutting into logs timber which was standing on lands owned by it in Taylor, Lafayette and Jefferson Counties, in the State of Florida, and causing them to be transported by the Atlantic Coast Line Railroad Company to the mills [fol. 311] and plant of your petitioner on Cedar Creek and St. Johns River at Eastport, a suburb of Jacksonville, Florida, and there manufacturing them into lumber and lumber products and marketing the same.

The present plant and place of business of your petitioner is and since the year 1913 has been at Eastport in the State of Florida aforesaid.

II

That on or about the first day of January, 1914, your petitioner was the owner of approximately a billion feet of standing pine timber and of the land upon which this timber stood in said Counties, and the same was practically accessible from and tributary to the line of railroad of the Atlantic Coast Line Railroad Company and for the purpose of making it possible to move this timber after it was cut into logs to the petitioner's plant at Eastport and there manufacture it into marketable lumber products, the said Railroad Company made a contract with your petitioner to transport over its line this timber when cut into logs and loaded in train-load lots of thirty cars from sidings between Clara and Perry inclusive to the plant of your petitioner at Eastport for Twelve dollars ($12.00) per car of Fifty Thousand (50,000) pounds throughout the entire cut of logs from said timber and to publish, post and file as required by Law, a Tariff fixing a rate for transportation of logs from points between Clara and Perry inclusive to its said plant at Eastport of Twelve dollars ($12.00) per car of [fol. 312] Fifty Thousand (50,000) pounds. That rate and the present rate was duly approved and fixed by the Railroad Commission of the State of Florida and published.

Your petitioner still has of the standing timber aforesaid to be cut into logs and transported to its said plant at least a billion feet in said Counties, and is by far the largest dealer in and manufacturer of forest products in that State.

Your petitioner relying on said contract and on the tariff rate on logs so fixed and approved by the Railroad Commission of Florida, has invested in constructing, enlarging, and equip-ing its plant and necessary equipment for carrying on its logging operations more than Three Million dollars ($3,000,000.00) and has thus built up and established a very large and important industry contributing very materially to the development and prosperity of the country on the line of said Railroad between Perry and Eastport inclusive in said State, and to that of practically the whole State.

Any material increase in the present rate for transporting logs between points in Florida would destroy this industry and render practically valueless this large investment of your petitioner.

This is also true of large investments made by other owners of standing timber and plants for the manufacture of the same in Florida.

III

The present intrastate rate for transportation of logs [fols. 313 & 314] between stations in Florida is remunerative to the Railroad Company.

There are practically no logs in Georgia available for shipment from that State into Florida.

Under the present Intrastate Tariff rates, channels of trade have been established and any material increase in these rates between points in Florida would disrupt them and result in great loss, not alone to your petitioner, but to others engaged in business enterprises there, and to their employees. Especially true is this of the trade route to Jacksonville, over which a large quantity of log business profitable to the carriers is now passing. The volume of traffic in logs moving intrastate in Florida moves principally between a few particular stations.

For the reason that interstate traffic in logs here moving or available is exceedingly small and the interstate movement is out of the ordinary course of existing or prospective trade, interstate commerce is not materially affected and no discrimination in fact exists.

Wherefore said Brooks-Scanlon Corporation, your petitioner, prays leave to intervene and to be treated as a party hereto with the right to have notice of and appear at the

Exhibit No.

Docket 18364

Witness, E. M. Price.

BEFORE THE
INTERSTATE COMMERCE COMMISSION

DOCKET NO. 18364.

GEORGIA PUBLIC SERVICE COMMISSION
VS.
ATLANTIC COAST LINE RAILROAD
COMPANY

RATES ON LOGS FROM FLORIDA TO
GEORGIA POINTS.

Sheet No. 1

Exhibit No.

Docket 18364

Witness, E. M. Price.

COMPARISON OF RATES ON LOGS BETWEEN POINTS IN FLORIDA WITH RATES BETWEEN POINTS IN FLORIDA AND POINTS IN GEORGIA.

Rates in Cents per car 50,000 pounds.

Distance	Florida Intrastate	Florida-Georgia Interstate
5 miles and under	$ 8.55	$12.50
10 miles and over 5	8.55	15.00
20 " " " 10	8.55	17.50
30 " " " 20	8.55	20.00
40 " " " 30	8.55	22.50
50 " " " 40	10.50	25.00
60 " " " 50	10.50	27.50
70 " " " 60	11.50	30.00
80 " " " 70	11.50	32.50
90 " " " 80	11.50	35.00
100 " " " 90	13.00	35.00
110 " " " 100	14.00	37.50
120 " " " 110	16.00	40.00
130 " " " 120	16.00	42.50
140 " " " 130	17.00	42.50
150 " " " 140	17.00	45.00
160 " " " 150	17.00	45.00
170 " " " 160	18.50	47.50

TARIFF AUTHORITY

Florida Intrastate Rates. ACL Ry. GFO 116, ICC. B 2255 Sup. 29.
Florida-Georgia Interstate Rates. J. H. Glenns ICC. A 415 Sup. 27.
(ACL Ry. GFO 253)

STATEMENT OF RATES ON LOGS FROM FLORIDA POINTS TO BAINBRIDGE, GA., COMPARED WITH RATES FROM FLORIDA POINTS TO FLORIDA MANUFACTURING POINTS.

Sheet No. 2

Exhibit No.

Docket 18364

Witness, E. M. Price.

Rates in Cents per car 50,000 pounds.

From	To	Distance Miles	Rate	Discrimination Against Bainbridge, Ga.
Stringer, Fla.	Bainbridge, Ga.	51	$27.50	$
Lake Butler, Fla.	Jacksonville, Fla.	53	10.50	17.00
Forrester, Fla.	Bainbridge, Ga.	51	27.50	
Townsend, Fla.	Jacksonville, Fla.	54	10.50	17.00
Fincher, Fla.	Bainbridge, Ga.	49	25.00	
Johnstown, Fla.	Jacksonville, Fla.	49	10.50	14.50
Winchester Sdg., Fla.	Bainbridge, Ga.	55	27.50	
Old Town, Fla.	Perry, Fla.	54	10.50	17.00
Miccosukee, Fla.	Bainbridge, Ga.	56	27.50	
Wilcox, Fla.	Perry, Fla.	57	10.50	17.00
Bryants Still, Fla.	Bainbridge, Ga.	56	27.50	
Dukes, Fla.	Jacksonville, Fla.	58	10.50	17.00
Alma, Fla.	Bainbridge, Ga.	54	27.50	
Townsend Still, Fla.	Jacksonville, Fla.	54	10.50	17.00
Brice, Fla.	Bainbridge, Ga.	60	27.50	
Worthington Spgs., Fla	Jacksonville, Fla.	61	11.50	16.00
Monticello, Fla.	Bainbridge, Ga.	60	27.50	
Hardeetown, Fla.	Perry, Fla.	65	11.50	16.00
Wadesboro, Fla.	Bainbridge, Ga.	63	30.00	
Sante Fe, Fla.	Jacksonville, Fla.	65	11.50	18.50
Capitola, Fla.	Bainbridge, Ga.	67	30.00	
Haynesworth, Fla.	Jacksonville, Fla.	69	11.50	18.50
El Destino, Fla.	Bainbridge, Ga.	70	30.00	
Burnetts Lake, Fla.	Jacksonville, Fla.	72	11.50	18.50
Cody, Fla.	Bainbridge, Ga.	74	32.50	
Alachua, Fla.	Jacksonville, Fla.	74	11.50	21.00
Fanlew, Fla.	Bainbridge, Ga.	80	32.50	
Haile, Fla.	Jacksonville, Fla.	81	11.50	21.00
Bakers Mill, Fla.	Bainbridge, Ga.	135	42.50	
Clara, Fla.	Jacksonville, Fla.	135	17.00	25.50
Jasper, Fla.	Bainbridge, Ga.	139	42.50	
Benotis, Fla.	Jacksonville, Fla.	141	17.00	25.50
Marion, Fla.	Bainbridge, Ga.	144	45.00	
Carbur, Fla.	Jacksonville, Fla.	145	17.00	28.00
Suwanee, Fla.	Bainbridge, Ga.	148	45.00	
Stanco, Fla.	Jacksonville, Fla.	150	17.00	28.00
Rixsford. Fla.	Bainbridge, Ga.	150	45.00	
Athena, Fla.	Jacksonville, Fla.	152	17.00	28.00
N. Live Oak, Fla.	Bainbridge, Ga.	154	45.00	
Trilby, Fla.	Perry, Fla.	154	17.00	28.00
Live Oak, Fla.	Bainbridge, Ga.	155	45.00	
Pineland, Fla.	Jacksonville, Fla.	156	17.00	28.00
Padlock. Fla.	Bainbridge, Ga.	159	45.00	
Dade City, Fla.	Perry, Fla.	161	18.50	26.50
Pine Mountain, Fla.	Bainbridge, Ga.	164	47.50	
Ellerslie, Fla.	Perry, Fla.	165	18.50	29.00
McAlpin. Fla.	Bainbridge, Ga.	166	47.50	
Greers, Fla.	Perry, Fla.	166	18.50	29.00

TARIFF AUTHORITY

ACL Ry. GFO 116. ICC B 2255 Sup. 29.
J. H. Glenns ICC A 415 Sup. 27 (ACL GFO 253)
ACL ICC B 2141.

Sheet No. 3

Exhibit No.

Docket 18364

Witness, E. M. Price.

STATEMENT OF RATES ON LOGS FROM FLORIDA POINTS TO ALBANY, GA., COMPARED WITH RATES FROM FLORIDA POINTS TO FLORIDA MANUFACTURING POINTS.

Rates in Cents per car 50,000 pounds.

From	To	Distance Miles	Rate	Discrimination Against Albany, Ga.
Stringer, Fla.	Albany, Ga.	73	$32.50	
Alachua, Fla.	Jacksonville. Fla.	74	11.50	$21.00
Forrester, Fla.	Albany, Ga.	74	32.50	
Cadillac, Fla.	Jacksonville, Fla.	78	11.50	21.00
Fincher, Fla.	Albany, Ga.	71	32.50	
Usher, Fla.	Perry, Fla.	72	11.50	21.00
Alma, Fla.	Albany, Ga.	77	32.50	
Otter Creek, Fla.	Perry, Fla.	78	11.50	21.00
Winchester Sdg., Fla.	Albany, Ga.	77	32.50	
Cadillac, Fla.	Jacksonville, Fla.	78	11.50	21.00
Bryants Still, Fla.	Albany, Ga.	78	32.50	
Otter Creek, Fla.	Perry, Fla.	78	11.50	21.00
Miccosukee, Fla.	Albany, Ga.	78	32.50	
Cadillac, Fla.	Jacksonville, Fla.	78	11.50	21.00
Brice, Fla.	Albany, Ga.	82	35.00	
Komoko, Fla.	Jacksonville, Fla.	83	11.50	23.50
Monticello, Fla.	Albany, Ga.	82	35.00	
Gunntown, Fla.	Perry, Fla.	84	11.50	23.50
Wadesboro, Fla.	Albany, Ga.	85	35.00	
Hickory, Fla.	Perry, Fla.	87	11.50	23.50
Capitola, Fla.	Albany, Ga.	89	35.00	
Lebanon, Fla.	Perry, Fla.	92	13.00	22.00
El Destino, Fla.	Albany, Ga.	92	35.00	
Tyler, Fla.	Jacksonville, Fla	95	13.00	22.00
Cody, Fla.	Albany, Ga.	96	35.00	
Trenton, Fla.	Jacksonville, Fla.	99	13.00	22.00
Fanlew, Fla.	Albany, Ga.	103	37.50	
Lottieville, Fla.	Jacksonville, Fla.	104	14.00	23.50
Asylum, Fla.	Albany, Ga.	115	40.00	
Eugene, Fla.	Jacksonville, Fla.	115	16.00	24.00
River, Jct., Fla.	Albany, Ga.	117	40.00	
Cross City, Fla.	Jacksonville, Fla.	118	16.00	24.00
Bakers Mill, Fla.	Albany, Ga.	157	45.00	
Dade City, Fla.	Perry, Fla.	161	18.50	26.50
Jasper, Fla.	Albany, Ga.	161	47.50	
Collins, Fla.	Perry Fla.	162	18.50	29.00
Marion, Fla.	Albany, Ga.	166	47.50	
Greers, Fla.	Perry, Fla.	166	18.50	29.00
Suwanee, Fla.	Albany, Ga.	170	47.50	
Lumberton, Fla.	Perry, Fla.	168	18.50	29.00

TARIFF AUTHORITY

ACL Ry. GFO 116 ICC. B 2255 Sup. 29.
J. H. Glenns ICC. A 415 Sup. 27 (ACL Ry. GFO 253)
ACL. ICC B 2141.

STATEMENT OF RATES ON LOGS FROM FLORIDA POINTS TO THOMASVILLE, GA., COMPARED WITH RATES FROM FLORIDA POINTS TO FLORIDA MANUFACTURING POINTS.

Sheet No. 4

Exhibit No.

Docket 18364

Witness, E. M. Price.

Rates in Cents per car 50,000 pounds.

From	To	Distance Miles	Rate	Discrimination Against Thomasville, Ga.
Forrester, Fla.	Thomasville, Ga.	15	$17.50	$
Alma, Fla.	Thomasville, Ga.	18	17.50	
Bryants Still, Fla.	Thomasville, Ga.	20	17.50	
Fincher, Fla.	Thomasville, Ga.	13	17.50	
Stringer, Fla.	Thomasville, Ga.	15	17.50	
Winchester Sdg., Fla.	Thomasville, Ga.	19	17.50	
Miccosukee, Fla.	Thomasville, Ga.	20	17.50	
Baldwin, Fla.	Jacksonville, Fla.	20	8.55	8.95
Monticello, Fla	Thomasville, Ga.	24	20.00	
Brice, Fla	Thomasville, Ga.	24	20.00	
Wadesboro, Fla.	Thomasville, Ga.	27	20.00	
Hines, Fla.	Perry, Fla.	34	8.55	11.95
Capitola, Fla.	Thomasville, Ga.	31	22.50	
El Destino, Fla.	Thomasville, Ga.	34	22.50	
Cody, Fla.	Thomasville, Ga.	38	22.50	
Buttcutt, Fla.	Perry, Fla.	38	8.55	13.95
Fanlew, Fla.	Thomasville, Ga.	44	25.00	
Cross City, Fla.	Perry, Fla.	45	10.50	14.50
Bakers Mill, Fla.	Thomasville, Ga.	99	35.00	
Trenton, Fla.	Jacksonville, Fla.	99	13.00	22.00
Jasper, Fla.	Thomasville, Ga.	103	37.50	
Marion, Fla.	Thomasville, Ga.	108	37.50	
Old Town, Fla.	Jacksonville, Fla.	109	14.00	23.50
Suwanee, Fla.	Thomasville, Ga.	112	40.00	
Ricksford, Fla.	Thomasville, Ga.	114	40.00	
N. Live Oak, Fla.	Thomasville, Ga.	118	40.00	
Live Oak, Fla.	Thomasville, Ga.	119	40.00	
Hernando, Fla.	Perry, Fla.	120	16.00	24.00
Padlock, Fla.	Thomasville, Ga.	123	42.50	
Pine Mountain, Fla.	Thomasville, Ga.	128	42.50	
McAlpin, Fla.	Thomasville, Ga.	130	42.50	
Hines, Fla.	Jacksonville, Fla.	128	16.00	26.50
Browns Sdg., Fla.	Thomasville, Ga.	134	42.50	
O'Brien, Fla.	Thomasville, Ga.	137	42.50	
Benotis, Fla.	Jacksonville, Fla.	141	17.00	25.50
Branford, Fla.	Thomasville, Ga.	142	45.00	
Burlington, Fla.	Thomasville, Ga.	149	45.00	
Hildreths, Fla.	Thomasville, Ga.	150	45.00	
Stanco, Fla.	Jacksonville, Fla.	150	17.00	28.00
Lake City Jct., Fla.	Thomasville, Ga.	152	45.00	
Ft. White, Fla.	Thomasville, Ga.	156	45.00	
Herlong, Fla.	Thomasville, Ga.	156	45.00	
Watkins, Spur, Fla.	Thomasville, Ga.	156	45.00	
Shelton, Fla.	Thomasville, Ga.	160	45.00	
Pineland, Fla.	Jacksonville, Fla.	156	17.00	28.00
Columbia, Fla.	Thomasville, Ga.	162	47.50	
Bass, Fla.	Thomasville, Ga.	165	47.50	
High Spgs., Fla.	Thomasville, Ga.	165	47.50	
Sisters Welcome, Fla.	Thomasville, Ga.	167	47.50	
Lumberton, Fla.	Perry, Fla.	168	18.50	29.00

TARIFF AUTHORITY

ACL Ry. GFO 116 ICC. B 2255 Sup. 29.
J. H. Glenns ICC A 415 Sup. 27 (ACL GFO 253)
ACL Ry. ICC. B 2141.

STATEMENT OF RATES ON LOGS FROM FLORIDA POIN TS TO QUITMAN, GA., COMPARED WITH RATES FROM FLORIDA POINTS TO FLORIDA MANUFACTURING POINTS.

Witness, E. M. Price.

Rates in Cents per car 50,000 pounds.

From	To	Distance Miles	Rate	Discrimination Against Quitman, Ga.
Fincher, Fla.	Quitman, Ga.	39	$22.50	
Godwins & Harrell, Fla.	Jacksonville, Fla.	39	8.55	$13.95
Stringer, Fla.	Quitman, Ga.	41	25.00	
Forrester, Fla.	Quitman, Ga.	42	25.00	
Alma, Fla.	Quitman, Ga.	44	25.00	
Winchester Sdg., Fla.	Quitman, Ga.	45	25.00	
Miccosukee, Fla.	Quitman, Ga.	46	25.00	
Bryants Still, Fla.	Quitman, Ga.	46	25.00	
Brice, Fla.	Quitman, Ga.	50	25.00	
Monticello, Fla.	Quitman, Ga.	50	25.00	
Lake Butler, Fla.	Jacksonville, Fla.	53	10.50	14.50
Wadesboro, Fla.	Quitman, Ga.	53	27.50	
Capitola, Fla.	Quitman, Ga.	57	27.50	
El Destino, Fla.	Quitman, Ga.	60	27.50	
Munich, Fla.	Jacksonville, Fla.	59	10.50	17.00
Cody, Fla.	Quitman, Ga.	64	30.00	
Hardeetown, Fla.	Perry, Fla.	65	11.50	18.50
Fanlew, Fla.	Quitman, Ga.	71	32.50	
Bakers Mill, Fla.	Quitman, Ga.	72	32.50	
Jasper, Fla.	Quitman, Ga.	76	32.50	
Otter Creek, Fla.	Perry, Fla.	78	11.50	21.00
Marion, Fla.	Quitman, Ga.	82	35.00	
Suwanee, Fla.	Quitman, Ga.	85	35.00	
Rixsford, Fla.	Quitman, Ga.	88	35.00	
Hickory, Fla.	Perry, Fla.	87	11.50	23.50
N. Live Oak, Fla.	Quitman, Ga.	92	35.00	
Live Oak, Fla.	Quitman, Ga.	92	35.00	
Padlock, Fla.	Quitman, Ga.	97	35.00	
Trenton, Fla.	Jacksonville, Fla.	99	13.00	22.00
Pine Mountain, Fla.	Quitman, Ga.	102	37.50	
McAlpin, Fla.	Quitman, Ga.	104	37.50	
Browns Sdg., Fla.	Quitman, Ga.	108	$37.50	$-
Gibora, Fla.	Perry, Fla.	110	14.00	23.50
O'Brien, Fla.	Quitman, Ga.	111	40.00	
Branford, Fla.	Quitman, Ga.	116	40.00	
Hernando, Fla.	Perry, Fla.	120	16.00	24.00
Burlington, Fla.	Quitman, Ga.	123	42.50	
Hildreths, Fla.	Quitman, Ga.	124	42.50	
Lake City Jct., Fla.	Quitman, Ga.	127	42.50	
Ft. White, Fla.	Quitman, Ga.	130	42.50	
Herlong, Fla.	Quitman, Ga.	130	42.50	
Watkins Spur, Fla.	Quitman, Ga.	130	42.50	
Floral City, Fla.	Perry, Fla.	132	17.00	25.50
Shelton, Fla.	Quitman, Ga.	134	42.50	
Columbia, Fla.	Quitman, Ga.	136	42.50	
Bass, Fla.	Quitman, Ga.	139	42.50	
High Spgs., Fla.	Quitman, Ga.	139	42.50	
Benotis, Fla.	Jacksonville, Fla.	141	17.00	25.50
Sisters Welcome, Fla.	Quitman, Ga.	141	45.00	
Lake City, Fla.	Quitman, Ga.	146	45.00	
E. Alachua, Fla.	Quitman, Ga.	147	45.00	
Burnetts Lake, Fla.	Quitman, Ga.	148	45.00	
Stanco, Fla.	Jacksonville, Fla.	150	17.00	28.00
Hague, Fla.	Quitman, Ga.	152	45.00	
Japps, Fla.	Quitman, Ga.	153	45.00	
Gracys, Fla.	Quitman, Ga.	155	45.00	
Paradise, Fla.	Quitman, Ga.	158	45.00	
Jay Bird, Fla.	Quitman, Ga.	159	45.00	
Dade City, Fla.	Perry, Fla.	161	18.50	26.50
T. & J. Crossing	Quitman, Ga.	161	47.50	
Gainesville, Fla.	Quitman, Ga.	162	47.50	
Lumberton, Fla.	Perry, Fla.	168	18.50	29.00

TARIFF AUTHORITY

ACL Ry. GFO 116 ICC B 2255. Sup. 29.
J. H. Glenns ICC A 415. Sup. 27 (ACL GFO 253)
ACL ICC B 2141.

Sheet No. 6

Exhibit No.

Docket 18364

Witness, E. M. Price.

STATEMENT OF RATES ON LOGS FROM FLORIDA POINTS TO VALDOSTA, GA., COMPARED WITH RATES FROM FLORIDA POINTS TO FLORIDA MANUFACTURING POINTS.

Rates in Cents per car 50,000 pounds.

From	To	Distance Miles	Rate	Discrimination Against Valdosta, Ga.
Bakers Mill, Fla.	Valdosta, Ga.	55	$27.50	$
Fincher, Fla.	Valdosta, Ga.	56	27.50	
Forrester, Fla.	Valdosta, Ga.	59	27.50	
Stringer, Fla.	Valdosta, Ga.	58	27.50	
Jasper, Fla.	Valdosta, Ga.	59	27.50	
Munich, Fla.	Jacksonville, Fla.	59	10.50	17.00
Alma, Fla.	Valdosta, Ga.	61	30.00	
Winchester Sdg., Fla.	Valdosta, Ga.	62	30.00	
Miccosukee, Fla.	Valdosta, Ga.	63	30.00	
Bryants Still, Fla.	Valdosta, Ga.	63	30.00	
Marion, Fla.	Valdosta, Ga.	65	30.00	
Brice, Fla.	Valdosta, Ga.	67	30.00	
Monticello, Fla.	Valdosta, Ga.	67	30.00	
Suwanee, Fla.	Valdosta, Ga.	68	30.00	
Wadesboro, Fla.	Valdosta, Ga.	70	30.00	
Usher, Fla.	Perry, Fla.	72	11.50	18.50
Rixsford, Fla.	Valdosta, Ga.	71	32.50	
Capitola, Fla.	Valdosta, Ga.	74	32.50	
N. Live Oak, Fla.	Valdosta, Ga.	75	32.50	
Live Oak, Fla.	Valdosta, Ga.	75	32.50	
El Destino, Fla.	Valdosta, Ga.	77	32.50	
Padlock, Fla.	Valdosta, Ga.	80	32.50	
Hickory, Fla.	Perry, Fla.	87	11.50	21.00
Cody, Fla.	Valdosta, Ga.	81	35.00	
Pine Mountain, Fla.	Valdosta, Ga.	85	35.00	
McAlpin, Fla.	Valdosta, Ga.	87	35.00	
Fanlew, Fla.	Valdosta, Ga.	88	35.00	
Hickory, Fla.	Perry, Fla.	87	11.50	23.50
Browns Sdg., Fla.	Valdosta, Ga.	91	35.00	
O'Brien, Fla.	Valdosta, Ga.	94	35.00	
Branford, Fla.	Valdosta, Ga.	99	35.00	
Trenton, Fla.	Jacksonville, Fla.	99	13.00	22.00
Burlington, Fla.	Valdosta, Ga.	106	37.50	
Hildreths, Fla.	Valdosta, Ga.	107	37.50	
Lake City Jct., Fla.	Valdosta, Ga.	110	37.50	
Gibora, Fla.	Perry, Fla.	110	14.00	23.50
Ft. White, Fla.	Valdosta, Ga.	113	40.00	
Herlong, Fla.	Valdosta, Ga.	113	40.00	
Watkins Spur, Fla.	Valdosta, Ga.	113	40.00	
Shelton, Fla.	Valdosta, Ga.	117	40.00	
Columbia, Fla.	Valdosta, Ga.	119	40.00	
Hernando, Fla.	Perry, Fla.	120	16.00	24.00
Bass, Fla.	Valdosta, Ga.	122	42.50	
High Spgs., Fla.	Valdosta, Ga.	122	$42.50	$
Sisters Welcome, Fla.	Valdosta, Ga.	124	42.50	
Lake City, Fla.	Valdosta, Ga.	129	42.50	
E. Alachua, Fla.	Valdosta, Ga.	130	42.50	
Hines, Fla.	Jacksonville, Fla.	128	16.00	26.50
Burnetts Lake, Fla.	Valdosta, Ga.	131	42.50	
Alachua, Fla.	Valdosta, Ga.	133	42.50	
Florida Transfer, Fla.	Valdosta, Ga.	133	42.50	
Valdosta Crossing, Fla.	Valdosta, Ga.	134	42.50	
Haynesworth, Fla.	Valdosta, Ga.	134	42.50	
Hague, Fla.	Valdosta, Ga.	135	42.50	
Japps, Fla.	Valdosta, Ga.	136	42.50	
Gracys, Fla.	Valdosta Ga.	138	42.50	
Cambon, Fla.	Valdosta, Ga.	139	42.50	
Sante Fe, Fla.	Valdosta, Ga.	139	42.50	
Benotis, Fla.	Jacksonville, Fla.	141	17.00	25.50
Paradise, Fla.	Valdosta, Ga.	141	45.00	
Jay Bird, Fla.	Valdosta, Ga.	142	45.00	
Worthington Spgs., Fla.	Valdosta, Ga.	142	45.00	
Munich, Fla.	Valdosta, Ga.	144	45.00	
T. & J. Crossing, Fla.	Valdosta, Ga.	144	45.00	
Gainesville, Fla.	Valdosta, Ga.	145	45.00	
Mandeville, Fla.	Valdosta, Ga.	144	45.00	
Duke, Fla.	Valdosta, Ga.	145	45.00	
Baldwin, Fla.	Valdosta, Ga.	149	45.00	
Townsend Still, Fla.	Valdosta, Ga.	150	45.00	
Stanco, Fla.	Jacksonville, Fla.	150	17.00	28.00
Lake Butler, Fla.	Valdosta, Ga.	151	45.00	
Mattox, Fla.	Valdosta, Ga.	154	45.00	
Johnstown, Fla.	Valdosta, Ga.	155	45.00	
McPherson, Fla.	Valdosta, Ga.	157	45.00	
La Buena, Ga.	Valdosta, Ga.	159	45.00	
Raiford, Fla.	Valdosta, Ga.	158	45.00	
Pineland, Fla.	Jacksonville, Fla.	156	17.00	28.00
Bessent, Fla.	Valdosta, Ga.	161	47.50	
Steckert, Fla.	Valdosta, Ga.	162	47.50	
Ellerbee, Fla.	Valdosta, Ga.	161	47.50	
Godwins & Harrell Fla.	Valdosta, Ga.	165	47.50	
Sapp, Fla.	Valdosta, Ga.	165	47.50	
Manning, Fla.	Valdosta, Ga.	166	47.50	
Lumberton, Fla.	Perry, Fla.	168	18.50	27.50

TARIFF AUTHORITY

ACL Ry. GFO 116 ICC B 2255 Sup. 29.
Glenns ICC A 415Sup.27 (ACL GFO 253)
ACL ICC B 2141.

Sheet No. 7

Exhibit No.

Docket 18364

Witness, E. M. Price.

STATEMENT OF RATES ON LOGS FROM FLORIDA POINTS TO WAYCROSS, GA., COMPARED WITH RATES FROM FLORIDA POINTS TO FLORIDA MANUFACTURING POINTS.

Rates in Cents per car 50,000 pounds.

From	To	Distance Miles	Rate	Discrimination Against Waycross, Ga.
Bakers, Mill, Fla.	Waycross, Ga.	63	$30.00	$
Sante Fe, Fla.	Jacksonville, Fla.	65	11.50	18.50
Jasper, Fla.	Waycross, Ga.	67	30.00	
Haynesworth, Fla.	Jacksonville, Fla.	69	11.50	18.50
Marion, Fla.	Waycross, Ga.	72	32.50	
Burnetts Lake, Fla.	Jacksonville, Fla.	72	11.50	21.00
Fla. Transfer, Fla.	Waycross, Ga.	72	32.50	
Usher, Fla.	Perry, Fla.	72	11.50	21.00
Valdosta Crossing, Fla.	Waycross, Ga.	73	32.50	
Alachua, Fla.	Jacksonville, Fla.	74	11.50	21.00
Suwanee, Fla.	Waycross, Ga.	76	32.50	
Cadillac, Fla.	Jacksonville, Fla.	78	11.50	21.00
Rixsford, Fla.	Waycross, Ga.	78	32.50	
Otter Creek, Fla.	Perry, Fla.	78	11.50	21.00
Cambon, Fla.	Waycross, Ga.	79	32.50	
Haile, Fla.	Jacksonville, Fla.	81	11.50	21.00
N. Live Oak, Fla.	Waycross, Ga.	82	35.00	
Komoko, Fla.	Jacksonville, Fla.	83	11.50	23.50
Live Oak, Fla.	Waycross, Ga.	83	35.00	
Gunntown, Fla.	Perry, Fla.	84	11.50	23.50
Mandeville, Fla.	Waycross, Ga.	84	35.00	
Hickory, Fla.	Perry, Fla.	87	11.50	23.50
Padlock, Fla.	Waycross, Ga.	88	35.00	
Lebanon, Fla.	Perry, Fla.	92	11.50	23.50
Baldwin, Fla.	Waycross, Ga.	89	35.00	
Tyler, Fla.	Jacksonville, Fla.	95	13.00	22.00
Pine Mountain, Fla.	Waycross, Ga.	92	35.00	
Tidewater, Fla.	Perry, Fla.	97	13.00	22.00
Mattox. Fla.	Waycross, Ga.	93	35.00	
Tyler, Fla.	Jacksonville, Fla.	95	13.00	22.00
McAlpin, Fla.	Waycross, Ga.	94	35.00	
Tidewater, Fla.	Perry, Fla.	97	13.00	22.00
McPherson, Fla.	Waycross, Ga.	97	35.00	
Steen, Fla.	Perry, Fla.	98	13.00	22.00
Browns Sdg., Fla.	Waycross. Ga.	98	35.00	
Trenton, Fla.	Jacksonville. Fla.	99	13.00	22.00
La Buena. Fla.	Waycross, Ga.	99	35.00	
Baskins, Fla.	Perry, Fla.	100	13.00	22.00
Bessent, Fla.	Waycross, Ga.	100	35.00	
Kemp, Fla.	Perry, Fla.	100	13.00	22.00
Steckert. Fla.	Waycross. Ga.	101	37.50	
Lottieville. Fla.	Jacksonville. Fla.	104	14.00	23.50
O'Brien, Fla.	Waycross, Ga.	101	37.50	
Wilcox, Fla.	Jacksonville, Fla.	105	$14.00	$23.50
Manning, Fla.	Waycross, Ga.	105	37.50	
Dunnellon, Fla.	Perry, Fla.	107	14.00	23.50
Branford, Fla.	Waycross, Ga.	107	37.50	
Old Town, Fla.	Jacksonville, Fla.	109	14.00	23.50
Sapp, Fla.	Waycross, Ga.	107	37.50	
Gibora, Fla.	Perry, Fla.	110	14.00	23.50
Godwins &Harrell, Fla.	Waycross, Ga.	108	37.50	
Old Town, Fla.	Jacksonville, Fla.	109	14.00	23.50
Ellerbee, Fla.	Waycross, Ga.	111	40.00	
Ladonia, Fla.	Perry, Fla.	114	16.00	24.00
Burlington, Fla.	Waycross, Ga.	113	40.00	
Eugene, Fla.	Jacksonville, Fla.	115	16.00	24.00
Hildreths, Fla.	Waycross, Ga.	114	40.00	
Ladonia, Fla.	Perry, Fla.	114	16.00	24.00
Raiford, Fla.	Waycross, Ga.	114	40.00	
Eugene, Fla.	Jacksonville, Fla.	115	16.00	24.00
Lake City Jct., Fla.	Waycross, Ga.	117	40.00	
Cross City, Fla.	Jacksonville, Fla.	118	16.00	$24.00
Johnstown, Fla.	Waycross, Ga.	118	40.00	
Shamrock, Fla.	Jacksonville, Fla.	119	16.00	24.00
Herlong, Fla.	Waycross, Ga.	120	40.00	
Ft. White, Fla.	Waycross, Ga.	120	40.00	
Buttcutt, Fla.	Jacksonville, Fla.	124	16.00	24.00
Forrester, Fla.	Waycross, Ga.	119	40.00	
Inverness, Fla.	Perry, Fla.	125	16.00	24.00
Watkins Spur, Fla.	Waycross, Ga.	121	42.50	
Alma, Fla.	Waycross, Ga.	122	42.50	
Lake Butler, Fla.	Waycross, Ga.	122	42.50	
Townsend Still, Fla.	Waycross, Ga.	123	42.50	
Bryants Still, Fla.	Waycross, Ga.	123	42.50	
Shelton. Fla.	Waycross. Ga.	124	42.50	
Buttcutt, Fla.	Jacksonville, Fla.	124	16.00	26.50
Fincher. Fla.	Waycross. Ga.	116	40.00	
Cross City. Fla.	Jacksonville. Fla.	118	16.00	24.00
Stringer, Fla.	Waycross, Ga.	119	40.00	
Hernando, Fla.	Perry, Fla.	120	16.00	24.00
Winchester Sdg., Fla.	Waycross, Ga.	123	42.50	
Iverness, Fla.	Perry, Fla.	125	16.00	26.50
Miccosukee. Fla.	Waycross. Ga.	124	42.50	
Buttcutt, Fla.	Jacksonville. Fla	124	16.00	26.50
Columbia, Fla.	Waycross, Ga.	126	42.50	

(Continued on page 7½)

STATEMENT OF RATES ON LOGS FROM FLORIDA POINTS TO WAYCROSS, GA., COMPARED WITH RATES FROM FLORIDA POINTS TO FLORIDA MANUFACTURING POINTS.

Sheet No. 71½

Exhibit No.

Docket 18364

Witness, E. M. Price.

Rates in Cents per car 50,000 pounds.

From	To	Distance Miles	Rate	Discrimination Against Waycross, Ga.
Hines, Fla.	Jacksonville, Fla.	128	$16.00	$26.50
Brice, Fla.	Waycross, Ga.	127	42.50	
Hines, Fla.	Jacksonville, Fla.	128	16.00	26.50
Duke, Fla.	Waycross, Ga.	128	42.50	
Hines, Fla.	Jacksonville, Fla.	128	16.00	26.50
Munich, Fla.	Waycross, Ga.	128	42.50	
Hines, Fla.	Jacksonville, Fla.	128	16.00	26.50
Bass, Fla.	Waycross, Ga.	129	42.50	
Floral City, Fla.	Perry, Fla.	132	17.00	25.50
Monticello, Fla.	Waycross, Ga.	128	42.50	
Hines, Fla.	Jacksonville, Fla.	128	16.00	26.50
Worthington Spgs, Fla.	Waycross, Ga.	130	42.50	
Floral City, Fla.	Perry, Fla.	132	17.00	25.50
Wadesboro, Fla.	Waycross, Ga.	130	42.50	
Floral City, Fla.	Perry, Fla.	132	17.00	25.50
High Springs, Fla.	Waycross, Ga.	130	42.50	
Floral City, Fla.	Perry, Fla.	132	17.00	25.00
Sisters Welcome, Fla.	Waycross, Ga.	131	42.50	
Clara, Fla.	Jacksonville, Fla.	135	17.00	25.50
Sante Fe, Fla.	Waycross, Ga.	134	42.50	
Pineola, Fla.	Perry, Fla.	137	17.00	25.50
Capitola, Fla.	Waycross, Ga.	135	42.50	
Clara, Fla.	Jacksonville, Fla.	135	17.00	25.50
Lake City, Fla.	Waycross, Ga.	136	42.50	
Pineola, Fla.	Perry, Fla.	137	17.00	25.50
E. Alachua, Fla.	Waycross, Ga.	137	42.50	
Pineola, Fla.	Perry, Fla.	137	17.00	25.50
El Destino, Fla.	Waycross, Ga.	138	42.50	
Haynesworth, Fla.	Waycross, Ga.	138	42.50	
Burnetts Lake, Fla.	Waycross, Ga.	139	42.50	
Alachua, Fla.	Waycross, Ga.	140	42.50	
Benotis, Fla.	Jacksonville, Fla.	141	17.00	25.50
Cody, Fla.	Waycross, Ga.	141	45.00	
Hague, Fla.	Waycross, Ga.	142	45.00	
Japps, Fla.	Waycross, Ga.	143	45.00	
Gracys, Fla.	Waycross, Ga.	146	45.00	
Paradise, Fla.	Waycross, Ga.	148	45.00	
Fanlew, Fla.	Waycross, Ga.	148	45.00	
Jay Bird, Fla.	Waycross, Ga.	149	45.00	
Stanco, Fla.	Jacksonville, Fla.	150	17.00	28.00
T. & J. Crossing, Fla.	Waycross, Ga.	151	45.00	
Gainesville, Fla.	Waycross, Ga.	152	45.00	
Trilby, Fla.	Perry, Fla.	154	17.00	28.00

TARIFF AUTHORITY

ACL Ry. GFO 116 ICC. B 2255 Sup. 29
Glenns ICC A 415 Sup. 27 (ACL GFO 253).
ACL ICC. B 2141.

Sheet No. 8

Exhibit No.

Docket 18364

Witness, E. M. Price.

STATEMENT SHOWING DISCRIMINATIONS AGAINST THOMASVILLE, GA., IN FAVOR JACKSONVILLE, FLA., ON LOGS FROM POINTS IN FLORIDA FOR THE SAME OR GREATER DISTANCE.

Rates in Cents per car 50,000 pounds.

From	To Jacksonville, Fla. Distance Miles	Rate	To Thomasville, Ga. Distance Miles	Rate	"Note" Discrimination Against Thomasville, Ga.
Bakers Mill, Fla	138	$17.00	99	$35.00	$54.00
Jasper, Fla.	142	17.00	103	37.50	61.50
Marion, Fla.	139	17.00	108	37.50	61.50
Suwanee, Fla.	135	17.00	112	40.00	69.00
Rixsford, Fla.	132	17.00	114	40.00	69.00
Live Oak, Fla.	128	16.00	119	40.00	72.00
Padlock, Fla.	123	16.00	123	42.50	79.50

TARIFF AUTHORITY

ACL Ry. GFO 116 ICC. B 2255 Sup. 29.
J. H. Glenns ICC A-415 Sup. 27 (ACL GFO 253)
ACL Ry. ICC B 2141.

Note: Discrimination is based on freight cost of Logs to produce a car of finished material, estimated at 3 cars of Logs to 1 car finished material.

STATEMENT SHOWING DISCRIMINATIONS AGAINST QUITMAN, GA., IN FAVOR OF JACKSONVILLE, FLA., ON LOGS FROM POINTS IN FLORIDA FOR THE SAME OR GREATER DISTANCE

Rates in Cents per car 50,000 pounds.

From	To Jacksonville, Fla. Distance Miles	Rate	To Quitman, Ga. Distance Miles	Rate	"Note" Discrimination Against Quitman, Ga.
Bakers Mill, Fla.	138	$17.00	72	$32.50	$46.50
Jasper, Fla.	142	17.00	76	32.50	46.50
Marion, Fla.	139	17.00	82	35.00	54.00
Suwanee, Fla.	135	17.00	85	35.00	54.00
Rixsford, Fla.	132	17.00	88	35.00	54.00
Live Oak, Fla.	128	16.00	92	35.00	57.00
Padlock, Fla.	123	16.00	97	35.00	57.00
Pine Mountain, Fla.	118	16.00	102	37.50	64.50
McAlpin, Fla.	117	16.00	104	37.50	64.50
Browns Sdg., Fla.	113	16.00	108	37.50	64.50
O'Brien, Fla.	110	14.00	111	40.00	78.00

TARIFF AUTHORITY

ACL Ry. GFO 116 ICC. B 2255 Sup. 29.
J. H. Glenns ICC A-415 Sup. 27 (ACL Ry. GFO 253)
ACL Ry. ICC B 2141.

Note: Discrimination is based on freight cost of Logs to produce a car of finished material, estimated at 3 cars logs to 1 car finished material.

STATEMENT SHOWING DISCRIMINATIONS AGAINST VALDOSTA, GA., IN FAVOR JACKSONVILLE AND PERRY, FLA., ON LOGS FROM POINTS IN FLORIDA FOR THE SAME OR GREATER DISTANCE

Rates in Cents per car 50,000 pounds.

From	To Jacksonville, Fla. Distance Miles	Rate	To Valdosta, Ga. Distance Miles	Rate	"Note" Discrimination Against Valdosta, Ga
Bakers Mill, Fla.	138	$17.00	55	$27.50	$31.50
Jasper, Fla.	142	17.00	59	27.50	31.50
Marion, Fla.	139	17.00	65	30.00	39.00
Suwanee, Fla.	135	17.00	68	30.00	39.00
Rixsford, Fla.	132	17.00	71	32.50	46.50
Live Oak, Fla.	128	16.00	75	32.50	49.50
Padlock, Fla.	123	16.00	80	32.50	49.50
Pine Mountain, Fla.	118	16.00	85	35.00	57.00
McAlpin, Fla.	117	16.00	87	35.00	57.00
Browns Sdg., Fla.	113	16.00	91	35.00	57.00
O'Brien, Fla.	110	14.00	94	35.00	63.00
Branford, Fla.	104	14.00	99	35.00	63.00
	To Perry, Fla.				
Cambon, Fla.	158	17.00	139	42.50	76.50
Mandeville, Fla.	148	17.00	144	45.00	84.00

TARIFF AUTHORITY

ACL Ry. GFO 116 ICC. B 2255 Sup. 29.
J. H. Glenns ICC A-415 Sup. 27 (ACL Ry. GFO 253)
ACL Ry. ICC B 2141.

Note: Discrimination is based on freight cost of Logs to produce a car of finished material, estimated at 3 cars of Logs to 1 car finished material.

STATEMENT SHOWING DISCRIMINATIONS AGAINST WAYCROSS, GA., IN FAVOR JACKSONVILLE, FLA., AND PERRY, FLA., ON LOGS FROM POINTS IN FLORIDA FOR THE SAME OR GREATER DISTANCE.

Witness, E. M. Price.

Rates in Cents per car 50,000 pounds.

From	To Jacksonville, Fla. Distance Miles	Rate	To Waycross, Ga. Distance Miles	Rate	"Note" Discrimination Against Waycross, Ga.
Bakers Mill, Fla.	138	$17.00	63	$30.00	$39.00
Jasper, Fla.	142	17.00	67	30.00	39.00
Marion, Fla.	139	17.00	72	32.50	46.50
Suwanee, Fla.	135	17.00	76	32.50	46.50
Rixsford, Fla.	132	17.00	78	32.50	46.50
Live Oak, Fla.	128	16.00	83	35.00	57.00
Padlock, Fla.	123	16.00	88	35.00	57.00
Pine Mountain, Fla.	118	16.00	92	35.00	57.00
McAlpin, Fla.	117	16.00	94	35.00	57.00
Browns Sdg., Fla.	113	16.00	98	35.00	57.00
O'Brien, Fla.	110	14.00	101	37.50	70.50
	To Perry, Fla.				
Cambon, Fla.	153	17.00	79	32.50	46.50
Mandeville, Fla.	148	17.00	84	35.00	54.00
Baldwin, Fla.	143	17.00	89	35.00	54.00
Mattox, Fla.	138	17.00	93	35.00	54.00
McPherson, Fla.	135	17.00	97	35.00	54.00
La Buena, Fla.	133	17.00	99	35.00	54.00
Bessent, Fla.	131	17.00	100	35.00	54.00
Steckert, Fla.	130	16.00	101	37.50	64.50
Manning, Fla.	126	16.00	105	37.50	64.50
Sapp, Fla.	124	16.00	107	37.50	64.50
Godwins & Harrell Fla.	124	16.00	108	37.50	64.50
Ellerbee, Fla.	120	16.00	111	40.00	72.00
Raiford, Fla.	117	16.00	114	40.00	72.00

TARIFF AUTHORITY

ACL Ry. GFO 116 ICC. B 2255 Sup 29.
J. H. Glenns ICC A 415 Sup 27. (ACL Ry GFO 253)
ACL Ry ICC B 2141.

Note: Discrimination is based on freight cost of logs to produce a car of finished material, estimated at 3 cars logs for 1 car finished material.

taking of testimony, produce and cross-examine witnesses and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Brooks-Scanlon Corporation, Petitioner, by P. A. Brooks, Secretary. P. O. Address: Eastport, Florida. (Corporate Seal.) Edward P. Sanborn, Petitioner's Attorney, 520 Guardian Life Bldg., Saint Paul, Minnesota.

Dated at Eastport, Florida, September 27, 1926.

(Here follows Exhibit No. 1, side folios 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, and 327.)

[fol. 328]

INTERVENERS' EXHIBIT 2

I. C. C. Docket 18364

Witness: Abrams

Comparison of Rates on Logs, C. L.

In Cents per 100 Pounds

	1	2	3	4	5	6	7	8	9	10	11	12
5 Miles	1.71	2.14	2.50	2.81	2.14	2.88	6.7	6.0	2.88	...	...	2.5
10 "	1.71	2.14	3.00	2.81	2.14	2.88	7.3	7.0	2.88	...	...	3.0
15 "	1.71	2.37	3.50	2.81	2.37	2.88	8.3	8.0	3.25	...	...	3.0
20 "	1.71	2.37	3.50	2.81	2.37	2.88	8.3	8.0	3.25	...	...	3.5
25 "	1.71	2.75	4.00	3.37	2.75	3.42	8.5	8.5	3.50	...	...	3.5
30 "	1.71	2.75	4.00	3.37	2.75	3.42	8.5	8.5	3.50	3.5	...	4.0
35 "	1.71	2.88	4.50	3.94	2.88	4.20	9.2	9.0	4.00	4.0	...	4.0
40 "	1.71	2.88	4.50	3.94	2.88	4.20	9.2	9.0	4.00	4.0	...	4.0
45 "	2.10	3.25	5.00	3.94	3.25	4.20	9.6	10.5	4.25	4.5	...	4.5
50 "	2.10	3.25	5.00	3.94	3.25	4.20	9.6	10.5	4.25	4.5	...	4.5
55 "	2.10	3.50	5.50	4.50	3.50	4.60	10.2	11.0	4.63	4.5	...	4.5
60 "	2.10	3.50	5.50	4.50	3.50	4.60	10.2	11.0	4.63	4.5	...	5.0
65 "	2.30	3.75	6.00	4.50	3.75	4.60	10.4	11.5	5.00	5.0	...	5.0
70 "	2.30	3.75	6.00	4.50	3.75	4.60	10.4	11.5	5.00	5.0	...	5.0

75	"	2.30	4.00	6.50	5.06	4.00	5.20	10.8	11.5	5.38	5.0	...	5.5
80	"	2.30	4.00	6.50	5.06	4.00	5.20	10.8	11.5	5.38	5.0	...	5.5
85	"	2.30	4.25	7.00	5.63	4.25	5.60	11.2	13.0	5.63	6.0	...	5.5
90	"	2.30	4.25	7.00	5.63	4.25	5.60	11.2	13.0	5.63	6.0	...	6.0
95	"	2.60	4.50	7.00	6.19	4.50	6.40	11.9	13.5	6.13	6.5	...	6.0
100	"	2.60	4.50	7.00	6.19	4.50	6.40	11.9	13.5	6.13	6.5	6.5	6.0
110	"	2.80	4.62	7.50	6.19	4.62	6.40	12.1	14.0	6.25	6.5	6.5	6.5
120	"	3.20	5.00	8.00	6.19	5.00	6.40	12.3	15.0	6.75	7.0	7.0	6.5
130	"	3.20	5.13	8.50	6.75	5.13	6.80	12.9	16.0	7.13	...	7.0	7.0
140	"	3.40	5.13	8.50	6.75	5.13	6.80	12.9	16.0	7.38	...	7.5	7.0
150	"	3.40	5.50	9.00	7.31	5.50	7.40	13.3	16.0	7.75	...	8.0	7.5
160	"	3.40	5.75	9.00	...	5.75	...	14.0	17.0	8.25	...	8.0	7.5
170	"	3.70	6.25	9.50	...	6.25	...	14.6	17.0	8.50	...	8.5	8.0

[fol. 329] Explanation of Columns

1. Florida Intrastate Rates applicable between points on the A. C. L. R. R. on Logs, carloads, except Cedar Logs, 50,000 pounds per car, reduced to cents per 100 lbs. Supplement 29 to A. C. L. R. R., I. C. C. B-2255. (So-called Cummer Scale.)

2. Florida Intrastate Rates applicable between points on the A. C. L. R. R. on Logs, viz: Ash, Gum, Hickory, Oak, Pine and Cypress not over six feet in length per car 40,000 pounds reduced to cents per 100 pounds. A. C. L. R. R. Florida Local Tariff No. 19, I. C. C. B-2370.

3. Interstate Rates A. C. L. R. R. applicable between Alabama and Georgia points; and between Florida and South Carolina points shown in the tariff on the one hand, and Alabama and Georgia points on the other (between Florida points indicated and Georgia points). Supplement 27 to Agent J. H. Glenn's Southern Lumber Tariff No. 6, I. C. C. A-415, on Logs (except Walnut, Cherry and Cedar Logs). carloads, 40,000 pounds minimum.

4. Between points in Florida on S. A. L. Ry. applicable on Logs (except Cedar Logs): over 6 feet in length and 8 inches or more in diameter at small end, for local consumption or for manufacture and reshipment, the manufactured product to be reshipped via S. A. L. Ry. Carload minimum weight 3,500 feet: Per 1,000 feet Board Measure Doyle Rule (See S. A. L. Ry. tariff I. C. C. A-4376). Reduced to cents per 100 pounds on basis weight of 10,000 pounds per 1,000 feet S. A. L. Ry. Florida Local Tariff No. 7, I. C. C. A-7148. (Rates in tariff apply on basis board measure.)

5. Between points in Florida on S. A. L. Ry. applicable on Logs: Ash, Gum, Hickory, Oak, Pine and Cypress not over 6 feet in length per car 40,000 pounds reduced to cents per 100 pounds—S. A. L. Ry. Florida Local Tariff No. 7, I. C. C. A-7148.

6. Between points in Florida on S. A. L. Ry. applicable on Logs, per car 2,500 feet. Reduced to cents per 100 pounds—on basis 25,000 pounds per 2,500 feet—S. A. L. Ry. Florida Local Tariff No. 7, I. C. C. A-7148. (Rates in tariff apply on basis log measure.)

7. Between points in Florida on S. A. L. Ry. applicable on Logs, Cedar, per car 24,000 pounds. Reduced to cents per 100 pounds S. A. L. Ry. Florida Local Tariff No. 7, I. C. C. A-7148.

8. Interstate Rates S. A. L. Ry. applicable generally between points in Virginia, North Carolina and South Carolina on the S. A. L. Ry. on Logs, (except Cherry and Walnut), C. L. 30,000 pounds minimum—S. A. L. Ry. Commodity Interstate Mileage Tariff 6, I. C. C. A-7150.

[fol. 330] 9. Interstate Rates applicable from South Carolina points to Savannah, Ga. as prescribed by Interstate Commerce Commission Docket 9134 (50 I. C. C. 81), (affected by the general changes), reduced to cents per 100 pounds. (So-called Pierpont Scale.)

10. Rates proposed by Examiner Cummings in Docket 17043. It will be observed these rates approximate closely those prescribed in the Pierpont Case Docket 9134.

11. Interstate Rates—Prescribed by the Interstate Commerce Commission in Docket 11414, 62 I. C. C. 669, for single line application, from points in South Carolina to North Carolina points.

12. Rates prescribed, and later suspended, for application between points in Georgia, by Georgia Public Service Commission in Docket 16019.

Norfolk, Va., Oct. 15th, 1926.

[fol. 331] INTERVENER'S EXHIBIT No. 3

I. C. C. Docket No. 18364

Witness: Potter

Comparison of Present Rates on Logs, C. L., to Valdosta, Ga., from Jasper, Fla., and Lake City, Fla., via G. S. & F. Ry., with Present Rates to Valdosta from same Points via A. C. L. R. R.; Also with Rates Sought by Complainant via A. C. L. R. R.

To Valdosta, Ga., from					
Jasper, Fla.....	Present:	Via G. S. & F.....	31 miles.....		4.5
		Via A. C. L.....	59 "		5.5
	Sought:	Via A. C. L.....	59 "		2.1

To Valdosta, Ga., from

Lake City, Fla.....	Present:	Via G. S. & F.....	60 miles.....		5.0
		Via A. C. L.....	129 "		8.5
	Sought:	Via A. C. L.....	129 "		3.2

G. S. & F. I. C. C. 866.
Glenn's I. C. C. A-415.

[fol. 332] INTERVENER'S EXHIBIT No. 4

I. C. C. Docket No. 18364

Witness: Potter

Comparison of the Intrastate Mileage Scale on Logs, C. L., Applicable Between Points in Florida on the A. C. L. R. R. with the Intrastate Rates Between Points on the G. S. & F. Ry. in Florida

	A. C. L. R. R. mileage rates in Florida (see Note 1)	G. S. & F. mileage rates in Florida (see Note 2)
5 miles and under.....	1.71	1.95
10 " " over 5.....	1.71	2.4
20 " " " 10.....	1.71	3.16
30 " " " 20.....	1.71	3.66
40 " " " 30.....	1.71	3.83
50 " " " 40.....	2.1	4.33
60 " " " 50.....	2.1	4.6
70 " " " 60.....	2.3	5.0
80 " " " 70.....	2.3	5.33
90 " " " 60.....	2.3	5.66
100 " " " 90.....	2.6	6.0
110 " " " 100.....	2.8	6.16
120 " " " 110.....	3.2	6.66
130 " " " 120.....	3.2	....
160 " " " 130.....	3.4	....
170 " " " 160.....	3.7	....

Note 1. Rates are applicable on Logs, C. L., except cedar, to be loaded and unloaded by owner and not to be unloaded on railroad right of way—Rates are published in cents per car of 50,000 lbs., excess in proportion, figures shown being the cents per 100 lbs. equivalent—A. C. L. R. R., I. C. C. B-2255.

Note 2. Rates are applicable on Logs, except cedar, C. L., and are published in cents per car 30,000 lbs. (Class P) the figures shown being the cents per 100 lbs. equivalent.

[fol. 333] INTERVENER'S EXHIBIT No. 5

I. C. C. Docket No. 18364

Witness: Potter

Comparison of Atlantic Coast Line Railroad Scale of Rates on Logs, Carload, Between Its Stations in Florida with Scale Applicable Intrastate in Georgia Between G. S. & F. Railway Stations

Miles	A. C. L. Florida intrastate scale (See Note No. 1)	G. S. & F. Georgia interstate scale (See Note No. 2)
5	1.71	3.1
7	1.71	3.1
10	1.71	3.5
12	1.71	3.5
15	1.71	4.2
17	1.71	4.2
20	1.71	4.4
22	1.71	4.4
25	1.71	4.8
27	1.71	4.8
30	1.71	5
32	1.71	5
35	1.71	5.4
37	1.71	5.4
40	1.71	5.6
42	2.1	5.6
45	2.1	5.8
50	2.1	5.8
52	2.1	5.8
55	2.1	6
57	2.1	6
60	2.1	6.7
62	2.3	6.7

Miles	A. C. L. Florida intra-state scale (See Note No. 1)	G. S. & F. Georgia inter-state scale (See Note No. 2)
65	2.3	6.9
67	2.3	6.9
70	2.3	7.1
72	2.3	7.1
75	2.3	7.3
77	2.3	7.3
80	2.3	7.7
82	2.3	7.7
85	2.3	7.9
87	2.3	7.9
90	2.3	8.1
92	2.6	8.1
95	2.6	8.5
97	2.6	8.5
100	2.6	8.9
110	3.2	9.2
120	3.2	9.4
130	3.2	9.6
160	3.4	10.6
170	3.7	10.8

[fol. 334] Note No. 1. Rates are applicable on logs, carload, except cedar, to be loaded and unloaded by owner and not to be unloaded on railroad right-of-way. Rates are published in cents per car of 50,000 pounds, excess in proportion, figures, shown being the cents per 100 equivalent A. C. L. R. R., I. C. C. B-2255.

Note No. 2. Logs, carload, minimum 24,000 Lbs. Rates are published in cents per car of 24,000 pounds, excess in proportion, figures shown being the cents per 100 equivalent. G. S. & F. Railway I. C. C. 869.

[fol. 335] INTERVENER'S EXHIBIT No. 6

I. C. C. Docket No. 18364

Witness: Potter

Comparison of A. C. L. Railroad Intrastate Mileage Scale Applicable on Logs, Carload, Between Points in Florida with Interstate Mileage Scale Applicable from G. S. & F. Railway Stations in Florida to G. S. & F. Railway Stations in Georgia

Miles	A. C. L. R. R. mileage rates in Florida (See Note No. 1)	G. S. & F. interstate scale from Florida stations to Valdosta, Ga. and from Georgia stations to Lake City, Fla. (See Note No. 2)
5 miles and under	1.71	3.5
7 miles and over 5	1.71	3.5
10	1.71	3.5
12	1.71	3.5
15	1.71	3.5
17	1.71	3.5
20	1.71	3.5
22	1.71	4
25	1.71	4
27	1.71	4
30	1.71	4
32	1.71	4.5
35	1.71	4.5
37	1.71	4.5
40	1.71	4.5
42	2.1	4.5
45	2.1	4.5
47	2.1	5
50	2.1	5
52	2.1	5
55	2.1	5
57	2.1	5

Miles	A. C. L. R. R. mileage rates in Florida (See Note No. 1)	G. S. & F. interstate scale from Florida stations to Valdosta, Ga. and from Georgia stations to Lake City, Fla. (See Note No. 2)
60	2.1	5
62	2.3	5.5
65	2.3	5.5
67	2.3	5.5
70	2.3	5.5
72	2.3	5.5
75	2.3	5.5
77	2.3	6
80	2.3	6
82	2.3	6
85	2.3	6
87	2.3	6
90	2.3	6
92	2.6	6
95	2.6	6
97	2.6	6.5
100	2.6	6.5
120	3.2	.
[fol. 336]		
130	3.2	.
160	3.4	.
170	3.7	.

Note No. 1. Rates are applicable on *h*ogs, carload, except cedar, to be loaded and unloaded by owner and not to be unloaded on railroad right-of-way. Rates are published in cents per car of 50,000 pounds, excess in proportion, figures shown being the cents per 100 equivalent. A. C. L. R. R. I. C. C. B-2255.

Note No. 2. Rates are published in cents per 100 pounds, applicable on logs (not hewn or sawn, not piling nor poles, and short-length blocks, round or split, carload minimum weight 40,000 pounds. G. S. & F. Ry. I. C. C. 866, Supplement 12.

[fol. 337] INTERVENER'S EXHIBIT No. 7

I. C. C. Docket No. 18364

Witness: Potter

Statement of Present Interstate Scales on Logs, Carload, Applicable from Points in Florida to Points in Georgia on the Atlantic Coast Line Railroad and on the G. S. & F. Railway; also Southern Railway Interstate Scale and Scale Sought by Complainant from A. C. L. Stations in Florida to A. C. L. Stations in Georgia.

(In Cents per 100 Pounds)

Miles	G. S. & F. interstate scale from Fla. stations to Valdosta, Ga. (See Note No. 1)	A. C. L. interstate scale from Florida stations to Valdosta, Ga. (See Note 2)	Rates sought by complainant from A.C.L. stations in Fla. to Valdosta, Ga. (See Note 3)	Southern Railway interstate scale (See Note 4)
5	3.5	2.5	1.71	2.5
7.	3.2	3	1.71	2.5
10	3.5	3	1.71	2.5
12	3.5	3.5	1.71	3.5
15	3.5	3.5	1.71	3.5
17	3.5	3.5	1.71	3.5
20	3.5	3.5	1.71	3.5
22	4	4	1.71	3.5
25	4	4	1.71	3.5
27	4	4	1.71	3.5
30	4	4	1.71	3.5
32	4.5	4.5	1.71	4
35	4.5	4.5	1.71	4
37	4.5	4.5	1.71	4
40	4.5	4.5	1.71	4
42	4.5	5	2.1	4.5
45	4.5	5	2.1	4.5
47	5	5	2.1	4.5
50	5	5	2.1	4.5
52	5	5.5	2.1	4.5
55	5	5.5	2.1	4.5
57	5	5.5	2.1	5
60	5	5.5	2.1	5
62	5.5	6	2.3	5
65	5.5	6	2.3	5
67	5.5	6	2.3	5
70	5.5	6	2.3	5
72	5.5	6.5	2.3	5.5
75	5.5	6.5	2.3	5.5
77	6	6.5	2.3	5.5
80	6	6.5	2.3	5.5
82	6	7	2.3	6
85	6	7	2.3	6

Miles	G. S. & F. interstate scale from Fla. stations to Valdosta, Ga. (See Note No. 1)	A. C. L. interstate scale from Florida stations to Valdosta, Ga. (See Note 2)	Rates sought by complainant from A.C.L. stations in Fla. to Valdosta, Ga. (See Note 3)	Southern Railway interstate scale (See Note 4)
87	6	7	2.3	6
90	6	7	2.3	6
[fol. 338]				
92	6	7	2.6	6.5
95	6	7	2.6	6.5
97	6.5	7	2.6	6.5
100	6.5	7	2.6	6.5
110	...	7.5	3.2	6.5
120	...	8	3.2	7
130	...	8.5	3.2	7
160	...	9	3.4	8
170	...	9.5	3.7	8.5

Note No. 1. Applicable on Logs, Carload (not hewn or sawn, not piling nor piles, and short leng*ht* blocks, round or split), minimum weight 40,000 pounds. G. S. & F. Railway I. C. C. 866—Supplement 12.

Note No. 2. Applicable on logs (except walnut, cherry and cedar logs) minimum weight 40,000 pounds. Glenn's I. C. C. A-415—Supplement 27.

Note No. 3. Applicable on logs, carload, except cedar, to be loaded and unloaded by owner and not to be unloaded on railroad right-of-way. Rates are published in cents per car of 50,000 pounds, excess in proportion, figures shown being the cents per 100 pounds equivalent—A. C. L. R. R. I. C. C. B-2255—Supplement 29.

Note No. 4. Applicable on logs, carload. Rates are published in cents per 100 pounds, carload minimum weight 40,000 pounds. Southern Railway I. C. C. A-9783.

[fol. 339]

INTERVENER'S EXHIBIT No. 8

I. C. C. Docket No. 18364

Witness: Potter

Comparison of Rates on Logs, Carload, Between Atlantic Coast Line Railroad Stations in Florida with Rates Between Stations on the Southern Railway in the Various States Shown

Miles	Logs, C. L. min. 50,000 pounds, applicable between A. C. L. stations in Fla. (See Note 1)	Logs, C. L. min. 24,000 pounds, applicable between Sou. Ry. stations in Ga. (See Note 2)		Logs, C. L. min. 40,000 pounds, applicable between Sou. Ry. stations in N. C. (See Note 3)	Logs, C. L. min. 24,000 pounds, applicable between Sou. Ry. station in S. C. (See Note 4)	Logs, C. L. min. 40,000 lb-., applicable between Sou. Ry. stations in Ala. (See Note 5)
		Pres.	Note 6			
5	1.71	3.1	2.5	1.8	2.4	2.5
7	1.71	3.1	3	1.8	2.9	2.5
10	1.71	3.5	3	1.8	2.9	2.5
12	1.71	3.5	3	1.8	3.5	3
15	1.71	4.2	3	2.1	3.5	3
17	1.71	4.2	3.5	2.1	3.8	3
20	1.71	4.4	3.5	2.1	3.8	3
22	1.71	4.4	3.5	2.1	3.8	3.5
25	1.71	4.8	3.5	2.6	3.8	3.5

Intervener's Exhibit No. 8—Continued

Miles	Logs, C. L. min. 50,000 pounds, applicable between A. C. L. stations in Fla. (See Note 1)	Logs, C. L. min. 24,000 pounds, applicable between Sou. Ry. stations in Ga. (See Note 2)		Logs, C. L. min. 40,000 pounds, applicable between Sou. Ry. stations in N. C. (See Note 3)	Logs, C. L. min. 24,000 pounds, applicable between Sou. Ry. station in S. C. (See Note 4)	Logs, C. L. min. 40,000 lb-., applicable between Sou. Ry. stations in Ala. (See Note 5)
		Pres.	Note 6			
27	1.71	4.8	4	2.6	4.3	3.5
30	1.71	5	4	2.6	4.3	3.5
32	1.71	5	4	2.6	4.5	4
35	1.71	5.4	4	2.9	4.5	4
37	1.71	5.4	4	2.9	4.6	4
40	1.71	5.6	4	2.9	4.6	4
42	2.1	5.6	4.5	2.9	5	4.5
45	2.1	5.8	4.5	3.3	5	4.5
47	2.1	5.8	4.5	3.3	5.4	4.5
50	2.1	5.8	4.5	3.3	5.4	4.5
52	2.1	5.8	4.5	3.3	5.4	4.5
55	2.1	6	4.5	3.5	5.4	4.5
57	2.1	6	5	3.5	5.4	5
60	2.1	6.7	5	3.5	5.4	5
62	2.3	6.7	5	3.5	5.4	5

65	2.3	6.9	5	4	5.4	5
67	2.3	6.9	5	4	5.7	5
70	2.3	7.1	5	4	5.7	5
72	2.3	7.1	5.5	4	5.8	5.5
75	2.3	7.3	5.5	4.3	5.8	5.5
77	2.3	7.3	5.5	4.3	5.8	5.5
80	2.3	7.7	5.5	4.3	4.8	5.5
82	2.3	7.7	5.5	4.3	6	5.5
85	2.3	7.9	5.5	4.6	6	5.5
87	2.3	7.9	6	4.6	6	6
90	2.3	8.1	6	4.6	6	6
92	2.6	8.1	6	4.6	6.2	6
95	2.6	8.5	6	5	6.2	6
97	2.6	8.5	6	5	6.2	6
100	2.6	8.9	6	5	6.2	6
[fol. 340]						
120	3.2	9.4	6.5	5.6	6.6	6.5
130	3.2	9.6	7	6.1	6.6	7
160	3.4	10.6	7.5	7.1	7.2	7.5
170	3.7	10.8	8	7.4	7.2	8

Note No. 1. Rates are published in cents per car of 50,000 pounds, excess in proportion, figures shown being the cents per 100 pounds equivalent. A. C. L. R. R. I. C. C. B-2255.

Note No. 2. Rates are published in cents per car of 24,000 pounds, excess in proportion, figures shown being the cents per 100 pounds equivalent. Sou. Ry. I. C. C. A-9879.

Note No. 3. Rates are published in cents per car of 40,000 pounds, excess in proportion, figures shown being the cents per 100 pounds equivalent. Sou. Ry. I. C. C. A-10031—Supplement 1.

Note No. 4. Rates are published in cents per car of 24,000 pounds, excess in proportion, figures shown being the cents per 100 pounds, equivalent. Sou. Ry. I. C. C. A-10027.

Note No. 5. Rates are published in cents per 100 pounds. Carload minimum weight 40,000 pounds. J. H. Glenn's I. C. C. A-504.

Note No. 6. Rates were issued in compliance with order of Ga. Railroad Commission, but now under suspension until January 1, 1927.

[fol. 341]

EXHIBIT No. 9

I. C. C. Docket No. 18364

Witness: J. A. Streyer

Single-line Mileage Scales of the Short or Weak Lines Shown Applying Intrastate in Florida, Intrastate in Georgia, and Interstate as Shown Hereon

Distance	A	B	C	D	E	F	G	H
5 Miles and under	1050	720	788	855	585	720	720	4½
7 " " over 5	1050	720	788	855	585	720	720	4½
10 " " " 7	1050	720	950	855	585	720	720	4½
12 " " " 10	1050	950	950	855	950	1050	1000	4½
17 " " " 12	1050	950	1050	1035	950	1050	1000	4½
20 " " " 17	1050	950	1200	1035	950	1050	1000	4½
22 " " " 20	1350	1100	1200	1035	1100	1150	1150	6
27 " " " 22	1350	1100	1250	1150	1100	1150	1150	6
30 " " " 27	1350	1100	1300	1150	1100	1150	1150	6
32 " " " 30	1500	1150	1300	1150	1150	1300	1250	7
37 " " " 32	1500	1150	1400	1300	1150	1300	1250	7
40 " " " 37	1500	1150	1450	1300	1150	1300	1250	7
42 " " " 40	1600	1300	1450	1300	1300	1400	1400	7
47 " " " 42	1600	1300	1600	1300	1300	1400	1400	7
50 " " " 47	1600	1300	1600	1600	1300	1400	1400	7

EXHIBIT No. 9—Continued

Distance					A	B	C	D	E	F	G	H
52 Miles and over				50	1750	1400	1600	1600	....	1600	....	..
57	"	"	"	52	1750	1400	1650	1600	....	1600	....	..
60	"	"	"	57	1750	1400	1700	1700	....	1600	....	..
62	"	"	"	60	1950	1500	1700	1700	....	....	....	..
67	"	"	"	62	1950	1500	1800	1700	....	....	....	..
70	"	"	"	67	1950	1500	1850	1850	....	....	....	..
72	"	"	"	70	2050	1600	1850	1850	....	....	....	..
77	"	"	"	72	2050	1600	1900	1850	....	....	....	..
80	"	"	"	77	2050	1600	2050	2000	....	....	....	..
82	"	"	"	80	2200	1700	2050	2000	....	....	....	..
87	"	"	"	82	2200	1700	2100	2000	....	....	....	..
90	"	"	"	87	2200	1700	2200	2000	....	....	....	..
92	"	"	"	90	2300	1800	2200	2000	....	....	....	..
97	"	"	"	92	2300	1800	2250	2000	....	....	....	..
100	"	"	"	97	2300	1800	2300	2150	....	....	....	..
110	"	"	"	100	2450	1850	2400	2150	....	....	....	..
120	"	"	"	110	2500	....	....	....	....	....	....	..
130	"	"	"	120	2500	....	....	....	....	....	....	..
140	"	"	"	130	2600	....	....	....	....	....	....	..
150	"	"	"	140	2700	....	....	....	....	....	....	..

NOTE.—For explanation of lettered colums, see Page 2.

A. Applicable interstate per car 40,000 pounds excess in proportion on line of Ga., Fla. and Ala. Ry., per I. C. C. No. 354.

B. Applicable intrastate in Florida per car 30,000 pounds excess in proportion over line of the Ga., Fla. and Ala. Ry., per I. C. C. No. 354, issued under protest in compliance with order No. 431 of Railroad Commission of Florida.

C. Applicable intrastate in Georgia per car 40,000 pounds excess in proportion on line of Ga., Fla. and Ala. Ry., per I. C. C. No. 354. This mileage scale of rates is generally applicable intrastate in Georgia on the short line railroad- known as Class "B" lines, and so classified by the Georgia Public Service Commission.

D. Applicable from Georgia and Florida stations on bolts or butts, heading, shingled or staved; to be manufactured and the products reshipped, destined to Valdosta, Ga., interstate, applying per car of 40,000 pounds excess in proportion, per G. & F. Ry. I. C. C. No. 499.

E. Applicable on line of Tavares & Gulf R. R. intrastate in Florida, applying per car of 30,000 pounds excess in proportion, per I. C. C. No. 11.

F. Applicable intrastate in Florida, applying per car of 30,000 pounds excess in proportion on line of Tampa and Jacksonville Ry. per I. C. C. No. 18, also Ala. & Western Fla. R. R. (formerly Birmingham, Columbus and St. Andrews Ry.), Florida Local Tariff No. 5.

G. Applicable on line of Marianna & Blountstown R. R. intrastate in Florida per I. C. C. No. 37, applying per car 30,000 pounds excess in proportion.

H. Applying interstate from Marianna & Blountstown R. R. stations per I. C. C. No. 37, applying per 100 pounds, carload minimum weight 30,000 pounds.

[fol. 343] Comparative Statement of Rates on Logs, Carloads, in Cents per cwt., Intrastate in South Carolina; Over Joint Hauls of Standard and Short or Weak Lines for the Respective Distances Over Each, with the Joint-Haul Scale as Prescribed by Georgia Public Service Commission for Joint-Haul Application on Standard and Short or Weak Lines Intrastate in Georgia, in Docket 15416, April 15, 1925, suspended and cancelled September 28, 1926.

	† Short or weak line miles					
* Standard line miles	10 Miles	@	20 Miles	@	25 Miles	@
50 Miles	7.49	6.5	8.24	6.5	8.62	7
75 Miles	7.91	7	8.66	7.5	9,04	7.5
100 Miles	8.21	7.5	8.96	7.5	9.34	8
120 Miles	8.58	8	9.33	8	9.71	8.5
140 Miles	8.71	8.5	9.46	8.5	9.84	9
150 Miles	8.71	8.5	9.46	9	9.84	9
170 Miles	9.01	9	9.75	9.5	10.14	9.5
200 Miles	9.38	10	10.13	10	10.51	10.5

	† Short or weak line miles					
* Standard line miles	30 Miles	@	40 Miles	@	50 Miles	@
50 Miles	8.62	7	9.24	7.5	9.74	7.5
75 Miles	9.24	7.5	9.66	7.5	10.16	8
100 Miles	9.34	8	9.96	8	10.46	8.5
120 Miles	9.71	8.5	10.33	8.5	10.83	9
140 Miles	9.84	9	10.46	9	10.96	9.5
150 Miles	9.84	9	10.46	9.5	10.96	9.5
170 Miles	10.14	9.5	10.76	10	11.26	10
200 Miles	10.51	10.5	11.13	10.5	11.63	10.5

@—Georgia Public Service Commission's ordered scale for combined distance of standard and short or weak lines.

*—Standard lines rate for distance shown lumber rate less 20% pages 156 and 157 of 46th Annual report of the Railroad Commission of South Carolina also less 20% account used in making joint rates.

†—Short or weak line rates for distance shown per Supt. No. 13 Northwestern Railroad of South Carolina I. C. C. No. 38 and not subject to deduction of 20% in making joint rates.

[fol. 344] Comparative Statement of Rates on Logs, Carloads, in Cents per cwt., Intrastate in South Carolina and Single Line Scales of Rates Prescribed by Georgia Public Service Commission for Single Line Hauls Over Trunk Lines and Over Short or Weak Lines in Georgia, in Docket 15416, April 15, 1925, Suspended and Ordered Cancelled Sept. 28, 1926.

Miles	@A	B	¢C	D	Miles	@A	B
5.....	2.4	2.5	3.25	3.5	90	6	6
7.....	2.85	3	3.25	4	95	6.2	6
10.....	2.85	3	3.25	4	100	6.2	6
12.....	3	3	4	4	105	6.5	6.5
15.....	3	3	4	4	110	6.5	6.5
17.....	3.3	3.5	4	4	115	6.66	6.5
20.....	3.3	3.5	4	4.5	120	6.66	6.5
25.....	3.3	3.5	4.25	4.5	125	6.66	7
30.....	4.3	4	4.25	5	130	6.66	7
35.....	4.5	4	5	5	135	6.83	7
40.....	4.66	4	5	5	140	6.83	7
45.....	5	4.5	5.5	5.5	145	6.83	7.5
50.....	5.3	4.5	5.5	5.5	150	6.83	7.5
55.....	5.3	5	5.63	6	160	7.2	8
60.....	5.3	5	5.63	6	170	7.2	8
65.....	5.3	5	5.75	6	180	7.3	8
70.....	5.66	5	5.75	6	190	7.46	8.5
75.....	5.83	5.5	5.75	6.5	200	7.66	8.5
80.....	5.83	5.5	5.75	6.5	210	7.66	9
85.....	6	6	....	....	220	8	9

A. Single line haul over trunk line in South Carolina, per 46th annual report of South Carolina Commission for year 1924.

B. Rates for single line application over trunk lines prescribed by Georgia Public Service Commission.

C. Single line haul over N. W. R. R. of S. C. (a short line) in South Carolina per Supt. 13 to their I. C. C. No. 38.

D. Rates for single line application over short and weak lines in Georgia, prescribed by Georgia Public Service Commission.

@. Carload minimum Weight 24,000 pounds.

¢. Carload minimum Weight 30,000 pounds.

[fol. 345] Page No. 5

Statement of Number of Cars, Logs, Billets, and Bolts, Revenue Receiver, per Diem and Switching Reclaim Paid, and Percentage of this Expense to Total Revenue by Thirteen Important Lines in Georgia for Period January Through May, 1925, Representing Five Months

Line	No. of cars	Revenue	Per diem	Switching and reclaim	Per diem switching & reclaim percentage of total revenue
Macon, Dublin & Savannah R. R.	260	4,505.69	638.00	1,359.50	44.3
Savannah & Atlanta Ry...	206	3,159.14	828.00	Not shown	26.2
Georgia & Florida Railway	1,126	23,032.54	5,810.00	1,943.97	33.6
Wadley Southern Railway..	81	1,281.09	408.00	.....	31.85
Louisville & Wadley R. R..	223	2,582.43	363.00	.....	14
Gainesville & Northwestern	19	350.00	79.00	.....	22.8
Savannah & Statesboro R.R.	54	610.26	112.00	.....	18.3
Sandersville Railroad.....	49	500.56	103.00	.....	20.6
Greene County Railroad...	42	366.27	65.00	.....	17.76
Wrightsville & Tennille R. R.....	190	2,995.56	663.00	.....	22.1
Georgia, Fla. & Ala. Ry....	173	2,008.55	672.00	.....	33.46
Flint River & Northeastern.	11	157.77	80.00	.....	51
Georgia Northern Railway.	20	273.51	99.00	.....	36
Totals	2,454	41,823.17	9,920.00	3,303.47	36.6%
Average revenue per car.....					$17.05
Average per diem, reclaim and switching per car.....					5.39
Average revenue less per diem, reclaim and switching per car..					$11.66

(Here follows map, side folio 346)

MAP IS TOO LARGE TO BE FILMED.

[fol. 347]

EXHIBIT No. 11

I. C. C. Docket No. 18364

Witness: J. W. Perrin

Statement Showing Rates of Atlantic Coast Line Railroad on Logs, C. L., Interstate and Intrastate to and from Stations in Florida. Rates Applicable per Carload are Converted to Basis of per 100 Lbs.

In Cents per 100 Lbs.

Miles	North Florida interstate logs, tariff description A	South Florida interstate logs, tariff description B	Florida intrastate short logs, tariff description C	Florida intrastate logs, NOS tariff description D
5	2.5	....	2.13	1.71
10	3	....	2.13	1.71
15	3.5	....	2.37	1.71
20	3.5	....	2.37	1.71
25	4	....	2.75	1.71
30	4	....	2.75	1.71
35	4.5	....	2.87	1.71
40	4.5	....	2.87	1.71
45	5	....	3.25	2.10
50	5	7.10	3.25	2.10
55	5.5	7.70	3.50	2.10
60	5.5	7.70	3.50	2.10
65	6	8.30	3 75	2.30
70	6	8.30	3.75	2.30
75	6.5	8.30	4	2.30
80	6.5	8.30	4	2.30
85	7	8.30	4.25	2.30
90	7	8.30	4.25	2.30
95	7	8.50	4.50	2.60
100	7	8.96	4.50	2.60
110	7.5	9.17	5	2.80
120	8	9.37	5	3.20
130	8.5	9.58	5.12	3.20
140	8.5	10.20	5.12	3.40
150	9	10.40	5.50	3.40

Miles	North Florida interstate logs, tariff description A	South Florida interstate logs, tariff description B	Florida intra-state short logs, tariff description C	Florida intra-state logs, NOS tariff description D
160	9	10.40	5.75	3.40
170	9.5	10.80	6.25	3.70
180	9.5	11.30	6.25	8.33
190	10	11.50	6.25	8.33
200	10	12.30	6.25	8.33
210	10.5	12.30	6.50	8.67
220	10.5	12.30	6.50	8.67
230	11	12.30	6.75	9
240	11	12.90	6.75	9
250	11.5	12.90	6.87	9.17
260	11.5	12.90	6.87	9.17
270	11.5	13.80	7.12	9.50
280	11.5	13.80	7.12	9.50
290	12	14.20	7.25	9.67
300	12	14.20	7.37	9.83
310	12.5	14.20	7.37	9.83
320	12.5	14.20	7.37	9.83
330	13	14.80	7.62	10.20
340	13	14.80	7.75	10.30
350	13.5	14.80	7.87	10.50
360	13.5	14.80	7.87	10.50
370	14	15.20	8	10.70
380	14	16	8.25	11
390	14.5	16.50	8.37	11.20
400	14.5	17.10	8.37	11.20
410	15	17.70	....	....
420	15	18.30	....	....
430	15.5	18.80	....	....
440	15.5	19.60	....	....
450	16	19.80	....	....
460	16	19.60	....	....
470	16.5	19.80	....	....

Miles	North Florida interstate logs, tariff description A	South Florida interstate logs, tariff description B	Florida intrastate short logs, tariff description C	Florida intrastate logs, NOS tariff description D
480	16.5	19.80	....	....
490	17	19.80	....	....
500	17	19.80	....	....
510	17.5	19.80	....	....
520	17.5	19.80	....	....
530	18	21.30	....	....
540	18	21.30	....	....

A—A. C. L. R. R. interstate scale applicable on Logs (except walnut, cherry and cedar), carloads, minimum weight 40,000 lbs.—Agt. J. H. Glenn's I. C. C. No. A-415, applicable interstate south of Charleston, S. C., and north of Jacksonville, Gainesville, Burnetts Lake and High Springs, Fla.

B—A. C. L. R. R. interstate scale applicable on Logs, all kinds (except mahogany, cedar, cherry and walnut), C. L., minimum weight 30,000 lbs., Class "P" rates per 24,000 pounds, applicable between stations in Florida south of Jacksonville, Gainesville, Burnetts Lake and High Springs on the one hand, and, on the other hand, stations in South Carolina south of Charleston, Georgia and Alabama—A. C. L. R. R., I. C. C. No. B-2103, with Notes A and 8 exceptions to Southern Classification, E. H. Dulaney's I. C. C. No. 20.

C—Florida intrastate rates (fixed by Florida Commission) applicable on Logs, viz: ash, gum, hickory, oak, pine and cypress, not over six (6) feet in length, per car 40,000 pounds, excess in proportion. (Class "P.")

D—Florida intrastate rates applicable on Logs, except cedar, subject to the following: 170 miles and under, per car of 50,000 lbs., excess in proportion, to be loaded and unloaded by owner and not to be unloaded on the railroad's right of way; over 170 miles (fixed by Florida Commission), C. L. minimum weight 30,000. (Class "P.")

Wilmington, N. C., Sept. 25, 1926-W.

[fol. 348] EXHIBIT No. 12

I. C. C. Docket 18364

Witness: Perrin

(Copy)

This agreement made the 29th day of June, in the year one thousand nine hundred and three, between the Jacksonville and Southwestern Railroad Company, party of the first part and the Cummer Lumber Company, party of the second part,

Witnesseth:

Whereas, the parties of the first part and second parts in conjunction with Wellington W. Cummer and Charles W. Chase have entered into an agreement bearing even date herewith for the sale to the said Charles W. Chase of the stock of the party hereto of the first part and for other purposes.

Now, therefore, in consideration of the premises and of the covenents and undertakings expressed in said agreement and of the sum of One Dollar to each of the parties hereto in hand paid by the other,

It is agreed:

First. The party of the first part shall transport over its line of railway all freights consigned to it by the party of the second part for the period of fifteen years from the date of this agreement at the following rates:

Logs

Logs, per car of 50,000 lbs., minimum, for a distance of forty (40) miles or less	$6.00 per car.
For a distance sixty miles and over forty (40) miles	7.00 per car.
For a distance under ninety (90) miles and over sixty miles	8.00 per car.
For each additional ten (10) miles and over ninety (90) miles an additional charge of	1.00 per car.

Provided the rate from the Suwannee River to Milldale shall not exceed ten dollars ($10.00) per car.

Wood

Wood in carload lots of 40,000 lbs., minimum for a distance of twenty (20) miles and under $6.00
For distances under forty (40) miles and over twenty (20) miles 7.00
For distances under ninety (90) miles and over forty (40) miles 9.00
For distances under one hundred and ten (110) miles and over ninety (90) miles 10.00

Provided that the rate shall not exceed ten dollars ($10.00) per car from the Suwannee River to Milldale.

For all wood for Jacksonville delivery, there shall be added the actual terminal charges per ton to the above rates.

[fol. 349]

Phosphates

The party of the second part shall be given as low a net rate on phosphates as may be given to any other shipper or shippers, directly or indirectly, and the rate charged by the party of the first part on phosphate shipments shall not be higher than that charged shippers from the same territory by other railway lines. If such rates on phosphates are not given, the party of the second part shall not be required to deliver phosphates to the party of the first part for shipment; but the failure of the party of the second part to deliver phosphate to the party of the first part for shipment, under such circumstances, shall not in any way affect the terms and conditions of this agreement as to the transportation of other freights consigned to the party of the first part.

Second. The party of the first part further agrees to furnish annually transportation over its lines of railway for a period of fifteen years for not to exceed ten persons who are officers and superintendents of the party of the second part. But it is understood that the persons so transported shall, by accepting such transportation, absolve the party of the first part from all liability for damages to their persons or their property incurred during such transportation.

In witness whereof the parties hereto have caused these presents to be signed by their respective presidents or vice-

presidents and their corporate seals to be hereto affixed in duplicate, the day and year first above written.

Jacksonville & Southwestern Railroad Company, by Wellington W. Cummer, President. Attest: Arthur G. Cummer, Secretary. (Seal.) Cummer Lumber Company, by Wellington W. Cummer, Vice-President. Attest: Waldo E. Cummer, Asst. Secretary. (Seal.)

STATE OF NEW YORK,
County of New York, ss:

I, Edwin F. Corey, a Commissioner of Deeds for the State of Florida, residing in the aforesaid State and County, and duly commissioned, do hereby certify that on this day personally appeared before me Wellington W. Cummer and Arthur G. Cummer, known to me, who severally acknowledged before me that they are respectively the President and Secretary of the Jacksonville and Southeastern Railroad Company, and that the seal attached to said instrument is the corporate seal of said Railroad Company, and they executed said instrument in the name of said Company and as its act and deed, and for the uses and purposes therein contained and expressed.

[fol. 350] And I do hereby further certify that on this day personally appeared before me Wellington W. Cummer and Waldo E. Cummer, known to me, and severally acknowledged before me that they are the Vice-President and Assistant Secretary respectively of the Cummer Lumber Company, one of the parties to the foregoing agreement, and that the seal thereto affixed is the corporate seal of the said Cummer Lumber Company, and that as such Vice-President and Assistant Secretary they executed the said agreement for and on behalf of said Company, and for the uses and purposes therein contained.

In witness whereof I have hereunto set my hand and affixed my official seal in the City of New York, State of New York, on this 29th day of June, A. D., 1903.

Edwin F. Corey, Commissioner for the State of Florida.

Valdosta, Ga., October 21, 1926-h.

[fol. 351] Docket 18364

In the Commission's Docket file there are two exhibits marked No. 12. The first is a set of three sheets and is wrong, there being contained in the three, sheet 1 and two copies of sheet 3.

The second set marked Exhibit 12 is apparently O. K.

August Gutheim.

[fol. 352] EXHIBIT No. 13

I. C. C. Docket No. 18364

Witness: J. W. Perrin

This contract, made and entered into this 26th day of January, A. D., 1914, by and between the Carpenter-O'Brien Company, a corporation under the laws of the State of Delaware, hereinafter for convenience referred to throughout this contract as the Lumber Company, party of the first part, and Atlantic Coast Line Railroad Company, a corporation under the laws of the State of Virginia, hereinafter for convenience referred to and called the Railroad Company, party of the second part:

Whereas the Lumber Company owns about One Billion (1,000,000,000) feet of pine timber in the counties of LaFayette and Taylor, State of Florida, which said timber is located largely tributary to the line of the Railroad Company, known as its Perry Branch, said track being located between Newberry and Perry, Florida, which said timber the said Lumber Company proposes to cut into logs, and desires the Railroad Company thereafter to transport the logs cut therefrom, from certain side tracks hereinafter mentioned, to be built and constructed by the Railroad Company, over its line to the Cedar Creek plant of the Lumber Company, located on or near the line of Railroad near Jacksonville, Florida, and to that end desires to make a contract with the said Railroad Company for the transportation of said logs as aforesaid; and

Whereas the Lumber Company proposes to build spur tracks into the woods from points on the Perry Branch to be designated by the Lumber Company as may suit their convenience between Clara and Perry, Florida, and desires

the right to connect said spur tracks with the sidetracks to be built by the Railroad Company at said points as hereinafter set forth, to the end that cars from the Railroad Company may be carried by the Lumber Company into the woods for loading, and thereafter returned and delivered to the said Railroad Company on the sidings to be constructed as aforesaid; and

Whereas the said Railroad Company and the Lumber Company have agreed upon the terms hereinafter set forth;

Now, therefore, this agreement witnesseth: That for and in consideration of the covenants and agreements hereinafter set forth and contained, to be mutually kept and performed, and the further consideration of the sum of One Dollar ($1.00) by each of the parties hereto to the other paid, the receipt of which is hereby acknowledged, the said parties do hereby mutually covenant each with the other, to-wit:

First. The Railroad Company, for its part, covenants and agrees that it will, at its own cost and expense, construct and thereafter maintain a side track or tracks of sufficient length to accomplish the convenient storage and interchange of loaded and empty cars as shall be designated by the Lumber Company. The Railroad Company further agrees that it will, from time to time as the necessities of the Lumber Company may require, take up and move any of the said sidings from the point where it was originally located to such other points as shall be designated by the Lumber Company as necessary for its purpose. The Railroad Company further agrees that it will construct and maintain at its own cost and expense, the necessary switches at such points on said siding as shall be designated by the Railroad Company, and will extend the rails leading from said switch to the edge of its right of way, and will thereafter permit the Lumber Company, at its own cost and expense, to connect with said rails the rails of its spur track by placing cars upon said side track to be built by the Railroad Company as aforesaid. It is agreed, however, that if in the construction of said track, the Railroad Company finds it necessary to use or occupy land belonging to other parties, that the Railroad Company will, and it hereby agrees to obtain and furnish to the Railroad Company, the

necessary rights of way, for the construction, maintenance and operation thereof.

Second. The Railroad Company further agrees that it will furnish for the service contemplated by this contract a sufficient number of cars, to enable the Lumber Company to load and ship a minimum of thirty (30) cars per day, or sixty (60) cars every other day (except Sundays and Legal Holidays) during the life of this agreement, and that it will furnish, in addition to said cars, an engine and necessary crew to move same; and that it will deliver said cars upon said side track at the rate of thirty (30) cars per day, or sixty (60) cars every alternate day (except Sundays and Legal Holidays) as the Lumber Company shall elect and from time to time designate. The Railroad Company further agrees that when said cars shall have been placed by it upon the side track aforesaid, the Lumber Company shall have, and is hereby granted the right to take the same and move them under its own power, and manned by its own crews, on the spur track and into the woods for loading, to be returned by said Lumber Company to said side track, under full load as hereinafter set forth, within forty-eight (48) hours (except Sundays and Legal Holidays) from the time the same shall have been delivered by the Railroad Company to it on the side track as aforesaid. Upon return of said cars under load with logs as aforesaid, the Railroad Company agrees that it will accept delivery of the train made up of said cars on said side track, and that it will move the said train from said side track over its lines to the plant of the Lumber Company at Cedar Creek, near Jacksonville, Florida, at the rate of thirty (30) cars per day, or sixty (60) cars every alternate day (Sundays and Legal Holidays excepted) as the Lumber Company shall elect, and from time to time designate. Upon arrival at the plant of the said Lumber Company at Cedar Creek, the Railroad Company agrees that it will place said train into a track or tracks to be furnished by the Lumber Company, at its plant aforesaid, for unloading by the Lumber Company, and will accept re-delivery of said train from said plant after the same shall have been unloaded, at a period of not later than forty-eight (48) hours after delivery (except Sundays and Legal Holidays) to the Lumber Company at said plant; said cars, after unloading, to be returned by

the Railroad Company to the side track aforesaid for delivery to the Lumber Company, and loadings in the woods, as hereinbefore set forth.

It is mutually agreed between the parties hereto: That the unloading of said cars at the Cedar Creek plant of the Lumber Company shall be done with such reasonable dispatch as will permit the Railroad Company to fulfill its schedule requiring the return of said cars to the sidings in use by the Lumber Company on the Perry Branch, in accordance with the schedule established by the Railroad Company, in order to carry out the movement of logs as hereinbefore set forth and agreed upon.

Third. The Railroad Company further agrees that it will publish, post and file as required by law, and will charge the Lumber Company thereunder, a tariff, fixing a rate for the transportation of logs from points between Clara and Perry, Florida, inclusive to Cedar Creek, Florida, at a rate [fol. 353] of Twelve Dollars ($12.00) per car of Fifty Thousand pounds (50,000) minimum, excess in proportion, said rate to apply in train load lots on a minimum of thirty (30) cars per train, and to be applicable per car per train. The Railroad Company further agrees that its tariffs shall provide that the rate hereinbefore named shall apply also upon round poles, eight feet, or more, in length, on a minimum per car of Fifty Thousand (50,000) pounds, excess in proportion, from the points hereinbefore named to the destination named, to-wit: Cedar Creek, Florida.

In consideration of the premises, the Lumber Company agrees:

Fourth. That it will, at its own cost and expense, construct and thereafter maintain a single track, wood spur, to be connected with the side tracks to be built by the Railroad Company at the points named as aforesaid, and leading from thence into the timber of the Lumber Company, and that it will take said cars when placed by the Railroad Company on said side track, for loading as aforesaid, and will move the same into the woods over its spur track, under its own power, and in charge of its own crews, and will, at its own risk, cost and expense, load the logs out as aforesaid upon said cars, and will thereafter within forty-eight (48) hours (except Sundays and Legal Holidays) after the train shall have been delivered to it as aforesaid, return the

same and redeliver it to the Railroad Company upon the side track constructed as aforesaid by the Railroad Company, for movement by the Railroad Company from said side track to the plant at Cedar Creek, Florida, as aforesaid. The Lumber Company further agrees that when said spur track is completed, it will equip and maintain the same in proper condition for the safe operation of cars thereover, and that it will provide the necessary engines, enginemen and crew for the purpose of moving said cars into the woods and return of the same to the siding as aforesaid. The Lumber Company further agrees that it will, at its own cost and expense, construct and maintain in proper condition at its plant at Cedar Creek, Florida, a track or tracks, to be connected with the tracks of the Railroad Company, for the purpose of receiving said trains when they shall be moved to the said plant by the Railroad Company, for unloading as aforesaid, and that said track or tracks for the delivery and unloading of said logs shall be maintained in condition to permit of the safe operation of the same by cars, loaded with logs, as aforesaid, at the cost and expense of the Lumber Company. The Lumber Company further agrees that the loading of said trains shall be done in accordance with the rules and regulations in effect on the Railroad Company at the time, and that none of the said cars shall be loaded in excess of its full carrying capacity, as indicated by the marks on said cars.

Upon delivery of the said train to the Lumber Company at its plant at Cedar Creek, Florida, the Lumber Company agrees that it will promptly, and with reasonable dispatch, unload the same, and will redeliver the said cars to the Railroad Company at its said mill not later than forty-eight (48) hours (except Sundays and Legal Holidays) after the same shall have been placed for delivery by the Railroad Company, under load, to the end that the said cars may be returned to the wood- siding in time to enable the Railroad Company to carry out the schedule which shall be fixed and agreed upon as contemplated in this contract.

Fifth. The Lumber Company further agrees that it will pay to the Railroad Company for transporting said logs as aforesaid from said sidings between Clara and Perry, Fla., inclusive, to the plant of the Lumber Company at Cedar Creek, Florida, at the rate to be published and filed by the

Railroad Company as aforesaid, to-wit: Twelve Dollars ($12.00) per car of Fifty Thousand (50,000) pounds minimum, excess in proportion, applicable per car per train, in train-load lots of thirty cars minimum. It is expressly understood and agreed by and between the parties hereto: That the minimum aforesaid is necessary in order to justify the establishment of the rates hereinbefore agreed upon, to be fixed, published and filed as aforesaid, and that the said minimum is to apply throughout the entire cut of logs of the Lumber Company as aforesaid.

Sixth. The Lumber Company further agrees that it will, and it hereby does assume responsibility for the care and condition of the cars of the Railroad Company, aforesaid, while the said cars are in the possession of the Lumber Company on the spur tracks built into the woods as aforesaid, from the sidings between Clara and Perry, Florida, inclusive, as the case may be, and also while such cars are in possession of the Lumber Company at its plant at Cedar Creek, Florida, and the Lumber Company hereby covenants and agrees that it will pay to the Railroad Company the amount of any injury, loss or damage to said cars while in its possession as aforesaid.

Seventh. The Lumber Company further agrees that it will promptly pay to the Railroad Company all freight and demurrage charges due for the movement of said logs, or to the detention of its cars whereon the same are loaded. The Lumber Company further agrees that it will pay to the said Railroad Company demurrage charges fixed by the Demurrage Rules in effect in the State of Florida, at the time, upon the line of the Railroad Company. For the purpose of computing demurrage, it is hereby agreed that the cars shall be deemed to have been placed for loading when the same are delivered by the Railroad Company upon the sidings to be constructed between Clara and Perry, Florida, inclusive, as the case may be, and when the same shall have been placed upon the tracks of the Lumber Company at Cedar Creek, Florida, for unloading. It is further agreed that if the Lumber Company shall fail, after the expiration of said period, to unload said cars at the points aforesaid, then the Railroad Company shall have, and is hereby given the right to enter upon the property of the Lumber Company, for the purpose of unloading same, the cost and ex-

pense of such unloading to be borne by the said Lumber Company, and it, the said Lumber Company, hereby agrees to pay the said Railroad Company such cost upon demand.

Eighth. The said Lumber Company further agrees that it will ship over the lines of the Railroad Company, and its connections, such portions of the product manufactured by it from the logs hauled to its mill at Cedar Creek, Florida, as aforesaid, as shall move by rail shipments, Provided, that the service is equal to and the rates over the Railroad and its connections, are as low as the lowest lawful rates in effect over other railroad lines operating between Cedar Creek, Florida, and the destinations of the manufactured product to be shipped as aforesaid.

Ninth. It is mutually covenanted and agreed by and between the parties hereto: That if, at any time during the continuance of this contract, the mill of the Lumber Company at Cedar Creek, Florida, shall be damaged or destroyed by fire, or otherwise, or if any accident shall happen to the machinery of the same, so that the Lumber Company shall be forced to shut down the same for repairs, or in the event of a strike on the part of the employees of the Railroad Company, or in the event that either the Railroad Company or the Lumber Company, for any unavoidable cause, shall be temporarily prevented from performing its part of this contract, then such party may give reasonable notice to the other party, requiring as of its right, the temporary suspension of the provisions of this contract, for a definite and reasonable period to be named in such notice, and thereupon, the provisions of this contract shall be temporarily suspended for the period named in such notice: Provided, however, that such suspension shall not, in any event, exceed six months, at any one time.

Tenth. It is further mutually covenanted and agreed: That the Lumber Company may, and is hereby granted the [fol. 354] option of increasing the rate of their shipments of pine logs up to ninety (90) cars per day; Provided, however, that in the event the Lumber Company desires to make this increase, the Railroad Company is to be given and allowed a reasonable time to secure by purchase, or by having built, a sufficient number of cars to enable it to comply with the requirements of the Lumber Company as aforesaid.

Eleventh. It is further mutually covenanted and agreed by and between the parties hereto, that this contract is made pursuant and subject to all of the laws of the United States and *to* the State of Florida, and that any change, amendment, alteration, or cancellation hereof, deemed, required or rendered necessary by any law of the United States, or the State of Florida, or by virtue of the judgment of any order of Court or Commission of competent jurisdiction, shall not be deemed a breach of the terms and conditions of this agreement.

Twelfth. It is further mutually covenanted and agreed, that this contract shall take effect and become operative as of, and on the 26th day of January A. D., 1914, and shall continue in force and effect thereafter for such time as is necessary to move the complete cut of timber hereinbefore specified, to-wit: approximately One Billion (1,000,000,000) feet, from the points hereinbefore designated to the plant of the Lumber Company at Cedar Creek, Florida, at the rate of movement hereinbefore specified. It is mutually agreed, however, That the Atlantic Coast Line Railroad Company is to be given reasonable time to secure and furnish necessary equipment, and to build and complete the spur track from its present line leading to Milldale, Florida to the Cedar Creek plant of the Lumber Company, aforesaid, which said spur track the Railroad Company hereby agrees that it will build with all reasonable dispatch. The Lumber Company agrees, that for the purpose of building and operating the spur track aforesaid, that it will grant to the Railroad Company right of way across the lands of the Lumber Company located in the course of said spur to its mill.

In witness whereof the parties hereto have caused this agreement to be executed, in duplicate, by their respective Presidents or Vice-Presidents, and their corporate seal to be hereto affixed, attested by their Secretaries or Assistant Secretaries, the day and the year first above written.

Atlantic Coast Line Railroad Company, by (S.) R. A. Brand, Fourth Vice-President. Attest: (S.) Lyman Delano, Asst. Secretary. (Seal.) Carpenter-O'Brien Company, by (S.) S. J. Carpenter, President. Attest: (S.) R. V. Paul, Secretary. (Seal.)

Wilmington, N. C., Sept. 24, 1926-W.

[fol. 355] EXHIBIT No. 14

I. C. C. Docket No. 18364

Witness: Perrin

Chronological Statement of Rates, in Cents per Car, 50,000 Pounds, Excess in Proportion, on Logs, Except Cedar Logs, Between Points on Atlantic Coast Line Railroad in Florida

Miles					1	2	3	4	5	6
40	Miles	and	under	.....	600	750	750	950	855	855
60	"	"	over	40.....	700	900	900	1150	1050	1050
90	"	"	"	60.....	800	1000	1000	1250	1150	1150
100	"	"	"	90.....	900	1150	1150	1450	1300	1300
110	"	"	"	100.....	1000	1250	1250	1550	1400	1400
130	"	"	"	110.....	1100	1400	1400	1750	1600	1600
160	"	"	"	130.....	1200	1500	1500	1900	1700	1700
170	"	"	"	160.....	....	....	1650	2050	1850	1850

Explanation of References

1. Rates as of June 24, 1918, A. C. L. R. R. Freight Tariff No. 4135.

2. 25% increase authorized under General Order 28, U. S. Railroad Administration, effective June 25, 1918.

3. Extension of scale to 170 miles—Effective April 30, 1919 in A. C. L. R. R. I. C. C. No. B-893.

4. 25% increase authorized under Ex Parte 74, effective August 26, 1920.

5. General 10% reduction effective July 1, 1922.

6. Present—A. C. L. R. R. I. C. C. B-2255.
Wilmington, N. C., October 18, 1926-h

[fol. 356] EXHIBIT No. 15

I. C. C. Docket No. 18364

Witness: J. W. Perrin

RAILROAD COMMISSION STATE OF FLORIDA, Tallahassee, Oct. 9, 1914

File #3685

Subject: Logs, Rates to Milldale, Fla.

Mr. Jas. Menzies, F. T. M., Atlantic Coast Line R. R., Wilmington, N. C.

DEAR SIR: This office is in receipt of your Freight Tariff No. 3339, effective October 3, 1914, carrying rates on logs, C. L. between stations on the Atlantic Coast Line R. R. up to a distance of 150 miles, which tariff cancels your No. 3282, which carried rates on logs in trainloads of 28 cars.

I am directed by the Commissioners to call your attention to the paragraph in this tariff which reads:

"When two or more cars are shipped from one station in one day by one shipper for delivery to one consignee at one destination these rates will be charged for an average carload weight of 50,000 pounds per car; excess of the average weight of 50,000 pounds per car will be charged for pro rata."

The Commissioners wish to say that they will not approve this tariff with the above paragraph incorporated therein, and will expect that you immediately re-publish the tariff with this paragraph eliminated.

When this is done, Freight Tariff No. 3339 will comply with the ideas of the Commissioners, in that the rates are stated per carload, and that they apply between all stations up to the given distance of 150 miles. The Commissioners wish it distinctly understood that this approval extends only to the method of stating the rates in this tariff and not to the rates themselves, and that in their opinion they are too low.

The rates carried in this tariff are such as might be deemed confiscatory, and there is little doubt in the minds

of the Commissioners if they were to order such a scale of rates that your company would contend that they amounted to confiscation and the taking of your property without due process of law.

To make such a scale of rates for the movement of logs in this State reduces the power of the Atlantic Coast Line R. R. Company to make other just and reasonable rates to be charged on all classes of freights that the public may be interested in. It also reduces the power of this Commission upon complaint and hearing hereafter to prescribe what might be just and reasonable rates to be charged for other freights when the entire revenues of the Atlantic Coast Line Railroad Company are to be taken into consideration. They amount practically to a discrimination against other classes of freight and all other people engaged in different lines of business.

You will recall that at the conference in Tallahassee on the 14th of July when the matter of withdrawing your log rates to Milldale, Fla., was under discussion the Commissioners advised you that they thought you should supplant the Milldale rates with your present rates on logs as they are being applied to other points in this State, which advice was based on the conviction that your log rates to Milldale were entirely too low.

The Commissioners regret that you have seen fit to publish these extremely low rates. There is no question but that the time will come when these barely remunerative rates will be used as the basis for opposition to the reduction of other rates, where perhaps a reduction might not only be justifiable but necessary, and therefore the Commissioners wish to impress upon you the fact that the low rates carried in your Freight Tariff #3339 were not only not ordered into effect or suggested by them, but were published by you in direct opposition to their advice and suggestions.

Yours very truly, (S.) J. H. Tench, Rate Expert.

Wilmington, N. C., October 8, 1926-W.

[fol. 357] EXHIBIT No. 16

I. C. C. Docket No. 18364

Witness: J. W. Perrin

(Copy)

Railroad Commission, State of Florida

Tallahassee, Fla., August 18, 1915.

Mr. E. C. McLeod, Kendrick, Fla.

DEAR SIR: Replying to your letter of Aug. 17th, with reference to the present rate on logs, carload, applicable between stations on the Atlantic Coast Line R. R., for a distance of 150 miles and under.

Beg to advise that the Commissioners thoroughly agree with you that this rate is too low. It was not made by the Commission nor was it put into effect with our approval. On the contrary, it was made effective contrary to the advice and wishes of the Commission. However, in order that you may become familiar with the situation, it will be necessary for me to go into the history of this rate at some length.

In April 1914, it came to the attention of the Commission that the Atlantic Coast Line was operating a special rate on logs in trainload lots from stations on the Newberry district to Milldale, Fla., that were not only much lower than the Commission Class F rates, which were applicable on logs, but they were much lower than any other rates that the Atlantic Coast Line had in effect on logs between points in this state.

To be perfectly frank, in the opinion of the Commissioners, this was a preferential rate, made in the interest of the Cummer Lumber Company, because the timber holdings of the Cummer Lumber Co., largely lay on the Newberry District of the Atlantic Coast Line, and because of the further fact that there was no mill at Milldale except that of the Cummer Lumber Company.

The Commissioners advised the Atlantic Coast Line R. R. Co., that they would have to cancel this tariff or make it applicable between all stations on its line in Florida, and

that in any event they would have to cancel the application of the rate to logs in trainload lots, as the Commissioners would not recognize anything above the carload as a rate making unit.

Much to the surprise of the Commissioners, the Atlantic Coast Line corrected the tariff so as to make it applicable between all stations, and open to every one who had as much as one car of logs to ship. As soon as this was done, we advised the Atlantic Coast Line that we did not approve of these rates, and we also asked Counsel for an opinion as to whether we had authority under the law to order the cancellation of a rate on the ground that in our opinion it was too low. We could get no encouragement from Counsel that the Commissioners possessed such authority under the law.

[fol. 358] As further information I enclose herewith a copy of a communication that was addressed to Mr. Jas. Menzies, Freight Traffic Manager of the Atlantic Coast Line R. R., just after their decision to publish these rates as open rates on a mileage basis.

Should the railroad at any time make application to the Commissioners to be allowed to cancel this scale of rates, we would unquestionably allow them to be cancelled, but as the matter now stands the move to cancel must be made by the carrier, as the Commission is without authority to order cancellation of a rate because it is too low.

So long as the present conditions prevail it would be to your advantage to locate your mill in Ocala, for the reasons set forth in your letter. The Commissioners regret that this condition exists, and I feel sure that after you read the letter to Mr. Menzies, which is attached hereto, you will be convinced that these rates are in effect, not because of any action of the Commissioners, but in spite of their expressed objection.

The present Class P rates in this state, which apply on lumber logs and wood, were put into effect by the Commissioners after an extended investigation, not only of the lumber industry in this state and adjoining territory, but also of the financial condition of the carriers, and we are convinced that these rates are just and reasonable as applicable to this traffic. If you will compare the rates on lum-

ber in this state with the rates on lumber in Georgia, Alabama, South Carolina, North Carolina, Virginia and Tennessee, you will find that our rates are lower than in any of these states, in which states the conditions are practically the same, except in that in each state mentioned the density of population is greater than it is in Florida.

Yours very truly, (Signed) R. Hudson Burr, Chairman.

Excerpt from 20th Annual Report, Railroad Commission, State of Florida, for Year Ending February 28, 1917

(Page 37)

"In April, 1914, it came to the attention of the Commissioners that the Atlantic Coast Line was operating a special rate on logs from stations on the Newberry district to Milldale, Florida. This rate was more than 50 per cent lower than the maximum log rates of the Commission. As there was only one mill at Milldale, and as the owners of the mill were large holders of timber rights on the Newberry district of the A. C. L., it was apparent that this rate could only be of benefit to one concern. The Commissioners advised the Atlantic Coast Line that the rate would have to be withdrawn or be made an open rate, applicable between all stations on its lines. The carrier elected to make the rate an open one, applicable between all stations.

In the opinion of the Commissioners, this is a notable instance of the removal of a discrimination and the reduction of a rate in much quicker time than could have been done by a regulating body not in close touch with local conditions."

Wilmington, N. C., October 18, 1926-h.

[fol. 359]

EXHIBIT No. 17

I. C. C. Docket No. 18364

Witness: J. W. Perrin

Statement Showing Interstate Scales on Logs Applicable Between Points on A. C. L. R. R. South of Charleston, S. C., Prior to August 15, 1925, and the Present Interstate Scale Uniformly Applicable Since That Date, Expressed in Cents per 100 Pounds

Prior to August 15, 1925

Miles	Alabama-interstate	Georgia interstate	Alabama-Georgia	Georgia-Florida	South Carolina interstate	General interstate	Average	Present interstate
	A	B	C	D	E	F	G	H
5	3.5	3.05	4.5	2.92	5.20	4.79	3.99	2.5
10	4.5	3.52	4.5	3.56	5.20	4.79	4.35	3
15	5	4.17	6	4.38	6.40	5.42	5.23	3.5
20	6	4.38	7	4.58	6.40	5.42	5.63	3.5
25	6.5	4.79	7	4.79	6.40	5.83	5.89	4
30	6.5	6.04	8.5	4.79	6.40	5.83	6.17	4
35	7	5.42	8.5	5.42	6.80	6.67	6.64	4.5
40	7	5.63	8.5	5.63	6.80	6.67	6.71	4.5
45	7	5.83	8.5	5.83	7	7.08	6.87	5
50	7	5.83	8.5	5.83	7	7.08	6.87	5
55	7	5	8.5	6.25	7.20	7.71	7.12	5.5
60	8	6.67	8.5	6.67	7.20	7.71	7.46	5.5
65	8	6.88	8.5	6.67	7.40	8.33	7.63	6
70	8	7.08	8.5	7.08	7.40	8.33	7.73	6
75	8	7.29	8.5	7.29	7.40	8.33	7.80	6.5

Exhibit No. 17—Continued

Miles	Alabama-interstate A	Georgia interstate B	Alabama-Georgia C	Georgia-Florida D	South Carolina interstate E	General interstate F	Average G	Present interstate H
80	8	7.71	8.5	7.71	7.40	8.33	7.94	6.5
85	8.5	7.92	8.5	8.13	7.80	8.33	8.20	7
90	8.5	8.13	8.5	8.33	7.80	8.33	8.27	7
95	8.5	8.54	8.5	8.54	7.80	8.54	8.40	7
100	8.5	8.96	8.5	8.96	7.80	8.96	8.61	7
110	9	9.17	8.5	9.17	8	9.17	8.84	7.5
120	9	9.38	8.5	9.38	8	9.38	8.94	8
130	9	9.58	8.5	9.58	8.20	9.58	9.07	8.5
140	9.5	10	8.5	10.21	8.20	10.21	9.44	8.5
150	10.5	10.42	8.5	10.42	8.20	10.42	9.74	9
160	10.5	10.63	10.5	10.42	8.20	10.42	10.11	9
170	10.5	10.83	10.5	10.83	8.20	10.83	10.28	9.5
180	10.5	11.25	10.5	11.25	8.20	11.25	10.49	9.5
190	11	11.38	10.5	11.38	8.20	11.38	10.64	10
200	....	11.67	....	11.88	8.20	12.29	11.01	10
210	....	11.88	....	12.08	8.60	12.29	11.21	10.5
220	....	12.29	....	12.29	8.60	12.29	11.37	10.5
230	....	12.50	....	12.29	8.60	12.29	11.42	11
240	....	12.50	....	12.92	8.60	12.92	11.74	11
250	....	12.71	....	12.92	8.80	12.92	11.84	11.5
260	....	12.92	....	12.92	8.80	12.92	11.89	11.5
270	....	13.13	....	13.75	.....	13.75	13.54	11.5
280	....	13.33	....	13.75	.....	13.75	13.61	11.5
290	....	13.54	....	14.17	.....	14.17	13.96	12
300	....	13.54	....	14.17	.....	14.17	13.96	12

310	....	.....	....	14.17	.....	14.17	14.17	12.5
320	....	.....	....	14.17	.....	14.17	14.17	12.5
330	....	.....	....	14.79	.....	14.79	14.79	13
340	....	.....	....	14.79	.....	14.79	14.79	13
350	....	.....	....	14.79	.....	14.79	14.79	13.5

[fol. 360]

360	....	.....	....	14.79	.....	14.79	14.79	13.5
370	....	.....	....	14.79	.....	15.21	15	14
380	....	.....	....	16.04	.....	16.04	16.04	14
390	....	.....	....	16.04	.....	16.46	16.25	14.5
400	....	.....	....	16.04	.....	17.08	16.56	14.5
410	....	.....	....	.....	.....	17.71	17.71	15
420	....	.....	....	.....	.....	18.33	18.33	15
430	....	.....	....	.....	.....	18.75	18.75	15.5
440	....	.....	....	.....	.....	19.58	19.58	15.5
450	....	.....	....	.....	.....	19.79	19.79	16
460	....	.....	....	.....	.....	19.79	19.79	16
470	....	.....	....	.....	.....	19.79	19.79	16.5
480	....	.....	....	.....	.....	19.79	19.79	16.5
490	....	.....	....	.....	.....	19.79	19.79	17
500	....	.....	....	.....	.....	19.79	19.79	17
510	....	.....	....	.....	.....	19.79	19.79	17.5
520	....	.....	....	.....	.....	19.79	19.79	17.5
530	....	.....	....	.....	.....	21.25	21.25	18
540	....	.....	....	.....	.....	21.25	21.25	18
550	....	.....	....	.....	.....	21.25	21.25	....

Explanation of Letters in Heading

A—Applicable Interstate in Alabama on Logs, C. L. Minimum Weight 24,000 lbs.
B—Applicable Interstate in Georgia on Logs, C. L. Minimum Weight 24,000 lbs.

C—Applicable between A. C. L. Stations in Alabama and A. C. L. Stations in Georgia, Bainbridge and West, on Logs, C. L. Minimum Weight 24,000 lbs.

D—Applicable between A. C. L. Stations in Georgia and A. C. L. Stations in Florida north of Jacksonville, Monticello and North, River Junction and North, High Springs and North, Lake City and North, Fanlew and North, on Logs, C. L. Minimum Weight 30,000 lbs.

E—Applicable Interstate in South Carolina on Logs, C. L. Minimum Weight 20,000 lbs.

F—Applicable Interstate between A. C. L. R. R. Stations south of Charleston, S. C., except as provided for in A, B, C, D and E, on Logs, C. L. Minimum Weight 30,000 lbs.

G—Average of scales A, B, C, D, E and F.

H—Uniform Interstate Scale on Logs (except Walnut, Cherry and Cedar), C. L. Minimum Weight 40,000 lbs., Applicable between A. C. L. R. R. Stations south of Charleston, S. C., except Stations in Florida south of the Line from Jacksonville to Dupont, Ga., via Burnetts Lake, Alachua and High Springs, but including Stations Burnetts Lake 6, I. C. C. No. A-415.

Tariff Authorities

A. C. L. R. R. Alabama Local Tariff No. 12, I. C. C. No. B-2096,
" " Georgia " " " 19, I. " " B-2092,
" " Alabama-Georgia Interstate Tariff No. 9, I. C. C. No. B-2097,
" " Georgia-Florida " " " 9, I. C. C. No. B-2112,
" " South Carolina " " " 9 I. C. C. No. B-2102,
" " Second Division " " " 10, I. C. C. No. B-2103,
Agent J. H. Glenn's Port Lumber Tariff No. 8, I. C. C. No. A-367,
" " " " Southern Lumber Tariff No 6, I. C. C. No. A-415.
Wilmington, N. C., September 21, 1926-W.

[fol. 361]

EXHIBIT No. 18

I. C. C. Docket No. 18364

Witness: J. W. Perrin

Statement Comparing Atlantic Coast Line Railroad Per-car Revenue on Logs, Interstate, and in Florida Intrastate, with Per-car Revenue on Other Commodities Moving Between Atlantic Coast Line Railroad Stations in Georgia, on the One Hand, and, on the Other Hand, Stations on Atlantic Coast Line Railroad in Florida North of High Springs, Fla.

Carload Rates Expressed in Cents per 100 Pounds. Weights per Car are Actual Average on Atlantic Coast Line Railroad for Year 1925

	Rates						Revenue per Car					
	Logs		Georgia-Florida Interstate				Logs		Georgia-Florida Interstate			
Miles	Interstate	Florida intrastate	Brick	Gravel, sand	Lime	Cement	Interstate 55,000 lbs.	Florida intrastate, 55,000 lbs.	Brick, 66,580 lbs.	Gravel Sand, 92,540 lbs.	Lime, 49,020 lbs.	Cement, 70,740 lbs.
5.....	2.5	1.71	3	2.25	3.95	4.50	$13.75	$ 9.41	$19.97	$20.82	$19.36	$31.83
10.....	3	1.71	3	2.50	5.10	5.65	16.50	9.41	19.97	23.14	25.00	39.97
15.....	3.5	1.71	3.5	2.70	5.65	6.20	19.25	9.41	23.30	24.99	27.70	43.86
20.....	3.5	1.71	3.5	2.95	5.65	6.20	19.25	9.41	23.30	27.30	27.70	43.86
25.....	4	1.71	4	3.15	6.20	6.75	22.00	9.41	26.63	19.15	30.39	47.75
30.....	4	1.71	4	3.40	6.20	6.75	22.00	9.41	26.63	31.46	30.39	47.75
35.....	4.5	1.71	4.5	3.60	6.75	7.35	24.75	9.41	29.96	33.31	33.09	51.99
40.....	4.5	1.71	4.5	3.85	7.35	7.90	24.75	9.41	29.96	35.63	36.03	55.88
45.....	5	2.10	5	4.05	7.35	7.90	27.50	11.55	33.29	37.48	36.03	55.88
50.....	5	2.10	5	4.30	7.90	8.45	27.50	11.55	33.29	39.79	38.73	59.78

Exhibit No. 18—Continued

	Rates						Revenue per Car					
	Logs		Georgia-Florida Interstate				Logs		Georgia-Florida Interstate			
Miles	Interstate	Florida intrastate	Brick	Gravel, sand	Lime	Cement	Interstate 55,000 lbs.	Florida intrastate, 55,000 lbs.	Brick, 66,580 lbs.	Gravel Sand, 92,540 lbs.	Lime, 49,020 lbs.	Cement, 70,740 lbs.
55.....	5.5	2.10	5	4.50	7.90	8.45	30.25	11.55	33.29	41.64	38.73	59.78
60.....	5.5	2.10	5	4.50	7.90	8.45	30.25	11.55	33.29	41.64	38.73	59.78
65.....	6	2.30	5.5	4.75	8.45	9	33.00	12.65	36.62	43.96	41.42	63.67
70.....	6	2.30	5.5	4.75	8.45	9	33.00	12.65	36.62	43.96	41.42	63.67
75.....	6.5	2.30	6	4.95	9	9.60	35.75	12.65	39.95	45.81	44.12	67.91
80.....	6.5	2.30	6	4.95	9	9.60	35.75	12.65	39.95	45.81	44.12	67.91
85.....	7	2.30	6.5	5.20	9.60	10.15	38.50	12.65	43.28	48.12	47.06	71.80
90.....	7	2.30	6.5	5.20	9.60	10.15	38.50	12.65	43.28	48.12	47.06	71.80
95.....	7	2.60	6.5	5.40	9.60	10.15	38.50	14.30	43.28	49.97	47.06	71.80
100.....	7	2.60	6.5	5.40	9.60	10.15	38.50	14.30	43.28	49.97	47.06	71.80
110.....	7.5	2.80	7	5.65	10.15	10.70	41.25	15.40	46.61	52.29	49.76	75.69
120.....	8	3.20	7	5.85	10.20	11.25	44.00	17.60	46.61	54.14	50.00	79.58
130.....	8.5	3.20	7	6.10	10.20	11.25	46.75	17.60	46.61	56.45	50.00	79.58
140.....	8.5	3.40	7	6.30	11.25	11.35	46.75	18.70	46.61	58.30	55.15	83.83
150.....	9	3.40	7.5	6.55	11.85	12.40	49.50	18.70	49.94	60.61	58.09	87.72
160.....	9	3.40	9.5	6.75	12.40	12.95	49.50	18.70	63.25	62.46	60.78	91.61
170.....	9.5	3.70	10	7	12.95	13.50	52.25	20.35	66.58	64.78	63.48	95.50
180.....	9.5	8.33	10	7	14.10	14.65	52.25	45.82	66.58	64.78	69.12	103.63
190.....	10	8.33	10.5	7.20	14.65	15.20	55.00	45.82	69.91	66.63	71.81	107.52
200.....	10	8.33	10.5	7.20	15.20	15.75	55.00	45.82	69.91	66.63	74.51	111.42

210.....	10.5	8.67	11	7.45	15.75	16.35	57.75	47.69	73.24	68.94	77.21	115.66
220.....	10.5	8.67	11	7.45	16.35	16.90	57.75	47.69	73.24	68.94	80.15	119.55
230.....	11	9	11.5	7.65	17.45	18	60.50	47.50	76.57	70.79	85.44	127.33
240.....	11	9	11.5	7.65	18	18.60	60.50	49.50	76.57	70.79	88.24	131.58
250.....	11.5	9.17	12	7.90	18.60	19.15	63.25	50.44	79.90	73.11	91.18	135.45
260.....	11.5	9.17	12	7.90	19.15	19.70	63.25	50.44	79.90	73.11	93.87	139.36
270.....	11.5	9.50	12.5	8.10	19.70	20.25	63.25	52.25	83.23	74.96	96.57	143.25
280.....	11.5	9.50	12.5	8.10	20.85	21.40	63.25	52.25	83.23	74.96	102.21	151.38
290.....	12	9.67	13	8.35	21.40	21.95	66.00	53.19	86.55	77.27	104.90	155.27
300.....	12	9.83	13	8.35	21.40	21.95	66.00	54.07	86.55	77.27	104.90	155.27

Tariff Authorities: Agent J. H. Glenn's I. C. C. No. A-415 (Logs); A. C. L. R. R. I. C. C. No. B-2112 (Cement, Lime, Gravel, Sand); Agent J. H. Glenn's I. C. C. No. A-508 (Brick).

Wilmington, N. C., September 25, 1926-W.

[fol. 362]

EXHIBIT No. 19

I. C. C. Docket No. 18364

Witness: J. W. Perrin

Statement Comparing Atlantic Coast Line Railroad Per-car Revenue on Logs, Interstate, and in Florida, Intrastate, with Per-car Revenue on Other Commodities Moving Intrastate in Georgia

Carload Rates Expressed in Cents per 100 Pounds

	Rates							Revenue per Car						
								Logs		Weights per car are actual average on A. C. L. R. R. during year 1925				
	Logs		Georgia-Florida Interstate							Georgia Intrastate				
Miles	Interstate	Florida intrastate	Brick	Gravel	Sand	Lime	Cement	Interstate, 55,000 lbs.	Florida Intrastate, 55,000 lbs.	Brick, 66,580 lbs.	Gravel, 92,540 lbs.	Sand, 92,540 lbs.	Lime, 49,020 lbs.	Cement, 70,740 lbs.
5.....	2.5	1.71	3	2.5	2	3.95	4.50	$13.75	$9.41	$19.97	$23.14	$18.51	$19.36	$34.83
10.....	3	1.71	3	2.5	2	5.10	5.65	16.50	9.41	19.97	23.14	18.51	25.00	43.73
15.....	3.5	1.71	3.5	2.5	2	5.10	6.20	19.25	9.41	23.30	23.14	18.51	25.00	47.99
20.....	3.5	1.71	3.5	3	2.5	5.65	6.20	19.25	9.41	23.30	27.76	23.14	27.70	47.99
25.....	4	1.71	4	3	2.5	5.65	6.75	22.00	9.41	26.63	27.76	23.14	27.70	52.25
30.....	4	1.71	4	3	2.5	6.20	6.75	22.00	9.41	26.63	27.76	23.14	30.39	52.25
35.....	4.5	1.71	4.5	3.5	3	6.20	7.35	24.75	9.41	29.96	32.39	27.76	30.39	56.89
40.....	4.5	1.71	4.5	3.5	3	6.75	7.90	24.75	9.41	29.96	32.39	27.76	33.09	61.15
45.....	5	2.10	5	3.5	3	6.75	7.90	27.50	11.55	33.29	32.39	27.76	33.09	61.15
50.....	5	2.10	5	4	3.5	7.35	8.45	27.50	11.55	33.29	37.02	32.39	36.03	65.40
55.....	5.5	2.10	5	4	3.5	7.90	8.45	30.25	11.55	33.29	37.02	32.39	38.73	65.40
60.....	5.5	2.10	5	4	3.5	7.90	8.45	30.25	11.55	33.29	37.02	32.39	38.73	65.40

65.....	6	2.30	5.5	4.5	4	7.90	9	33.00	12.65	36.62	41.64	37.02	38.73	69.66
70.....	6	2.30	5.5	4.5	4	7.90	9	33.00	12.65	36.62	41.64	37.02	38.73	69.66
75.....	6.5	2.30	6	4.5	4	8.45	9.60	35.75	12.65	39.95	41.64	37.02	41.42	74.30
80.....	6.5	2.30	6	4.5	4	8.45	9.60	35.75	12.65	39.95	41.64	37.02	41.42	74.30
85.....	7	2.30	6.5	5	4.5	9	10.15	38.50	12.65	43.28	46.27	41.64	44.12	78.56
90.....	7	2.30	6.5	5	4.5	9	10.15	38.50	12.65	43.28	46.27	41.64	44.12	78.56
95.....	7	2.60	6.5	5	4.5	9	10.15	38.50	14.30	43.28	46.27	41.64	44.12	78.56
100.....	7	2.60	6.5	5	4.5	9	10.15	38.50	14.30	43.28	46.27	41.64	44.12	78.56
110.....	7.5	2.80	7	5	4.5	9.60	10.70	41.25	15.40	46.61	46.27	41.64	47.06	82.82
120.....	8	3.20	7	5.5	5	9.60	11.25	44.00	17.60	46.61	50.90	46.27	47.06	87.08
130.....	8.5	3.20	7	5.5	5	10.15	11.25	46.75	17.60	46.61	50.90	46.27	49.76	87.08
140.....	8.5	3.40	7	6	5.5	10.15	11.85	46.75	18.70	46.61	55.52	50.90	49.76	91.72
150.....	9	3.40	7.5	6	5.5	11.25	12.40	49.50	18.70	49.94	55.52	50.90	55.15	95.98
160.....	9	3.40	7.5	6	5.5	11.85	12.95	49.50	18.70	49.94	55.52	50.90	58.09	100.23
170.....	9.5	3.70	8	6.5	6	12.40	13.50	52.25	20.35	53.26	60.15	55.52	60.78	104.49
180.....	9.5	8.33	8	6.5	6	12.95	14.65	52.25	45.82	53.26	60.15	55.52	63.49	113.39
190.....	10	8.33	8.5	6.5	6	13.50	15.20	55.00	45.82	56.59	60.15	55.52	66.18	117.65
200.....	10	8.33	8.5	7	6.5	14.10	15.75	55.00	45.82	56.59	64.78	60.15	69.12	121.91
210.....	10.5	8.67	9	7	6.5	14.65	16.35	57.75	47.69	59.92	64.78	60.15	71.81	126.55
220.....	10.5	8.67	9	7	6.5	15.20	16.90	57.75	47.69	59.92	64.78	60.15	74.52	130.81
230.....	11	9	9	7.5	7	15.75	18	60.50	49.50	59.92	69.41	64.78	77.21	139.32
240.....	11	9	9	7.5	7	16.35	18.60	60.50	49.50	59.92	69.41	64.78	80.15	143.96
250.....	11.5	9.17	9.5	7.5	7	17.45	19.15	63.25	50.44	63.25	69.41	64.78	85.54	148.22
260.....	11.5	9.17	9.5	7.5	7	18	19.70	63.25	50.44	63.25	69.41	64.78	88.24	152.48
270.....	11.5	9.50	10	8	7.5	18.60	20.25	63.25	52.25	66.58	74.03	69.41	91.18	156.74
280.....	11.5	9.50	10	8	7.5	19.15	21.40	63.25	52.25	66.58	74.03	69.41	93.87	165.64
290.....	12	9.67	10.5	8	7.5	19.70	21.95	66.00	53.19	69.91	74.03	69.41	96.57	169.89
300.....	12	9.83	10.5	8	7.5	20.25	21.95	66.00	54.07	69.91	74.03	69.41	99.27	169.89

Tariff Authority: Agent J. H. Glenn's I. C. C. No. A-415.

Wilmington, N. C., Sept. 23, 1926-W.

[fol. 363]

EXHIBIT No. 20

I. C. C. Docket No. 18364

Witness: J. W. Perrin

Statement Comparing Atlantic Coast Line Railroad Per-car Revenue on Logs, Interstate, and in Florida Intrastate, with Per-car Revenue on Other Commodities Moving Intrastate in Florida.

Carload Rates Expressed in Cents per 100 lbs. Weights per Car are Actual Average on A. C. L. R. R. During Year 1925.

	Rates							Revenue per car						
	Logs		Florida Intrastate					Logs		Florida Intrastate				
Miles	Interstate	Florida intrastate	Brick	Lime-stone	Sand	Lime	Cement	Inter-state, 55,000 lbs.	Florida Intra-state, 55,000 lbs.	Brick, 66,580 lbs.	Lime-stone, 92,540 lbs.	Sand, 92,540 lbs.	Lime, 49,020 lbs.	Cement, 70,740 lbs.
5.....	2.5	1.71	3.83	2.70	2.38	6.20	6.75	$13.75	$9.41	$25.50	$24.99	$22.02	$30.39	$47.75
10.....	3	1.71	4.17	3	2.64	6.20	6.75	16.50	9.41	27.76	27.76	24.43	30.39	47.75
15.....	3.5	1.71	5	3.83	3.19	6.75	7.35	19.25	9.41	33.29	35.44	29.52	33.09	51.99
20.....	3.5	1.71	5	3.83	3.19	6.75	7.35	19.25	9.41	33.29	35.44	29.52	33.09	51.99
25.....	4	1.71	5.17	3.83	3.47	7.90	8.45	22.00	9.41	34.42	35.44	32.11	38.72	58.78
30.....	4	1.71	5.17	3.83	3.47	7.90	8.45	22.00	9.41	34.42	35.44	32.11	38.72	58.78
35.....	4.5	1.71	5.33	4.33	3.75	8.45	9	24.75	9.41	35.49	40.07	34.70	40.42	63.67
40.....	4.5	1.71	5.33	4.33	3.75	8.45	9	24.75	9.41	35.49	40.07	34.70	40.42	63.67
45.....	5	2.10	5.67	4.50	4.17	9	9.60	27.50	11.55	37.75	41.64	38.59	44.12	67.91
50.....	5	2.10	5.67	4.50	4.17	9	9.60	27.50	11.55	37.75	41.64	38.59	44.12	67.91
55.....	5.5	2.10	6	5	4.31	9.60	10.15	30.25	11.55	39.85	46.27	39.88	47.06	71.80
60.....	5.5	2.10	6	5	4.31	9.60	10.15	30.25	11.55	39.85	46.27	39.88	47.06	71.80

65.....	6	2.30	6.17	5.17	4.44	10.15	10.70	33.00	12.65	41.08	47.84	41.09	49.76	75.69
70.....	6	2.30	6.17	5.17	4.44	10.15	10.70	33.00	12.65	41.08	47.84	41.09	49.76	75.69
75.....	6.5	2.30	6.50	5.33	4.44	10.70	11.25	35.75	12.65	43.28	49.32	41.09	52.45	79.58
80.....	6.5	2.30	6.50	5.33	4.44	10.70	11.25	35.75	12.65	43.28	49.32	41.09	52.45	79.58
85.....	7	2.30	6.83	5.67	4.86	11.25	11.85	38.50	12.65	45.47	52.47	44.97	55.15	83.83
90.....	7	2.30	6.83	5.67	4.86	11.25	11.85	38.50	12.65	45.47	52.47	44.97	55.15	83.83
95.....	7	2.60	6.83	5.83	5.14	11.85	12.40	38.50	14.30	45.47	53.95	47.57	58.09	87.72
100.....	7	2.60	6.83	5.83	5.14	11.85	12.40	38.50	14.30	45.47	53.95	47.57	58.09	87.72
110.....	7.5	2.80	7.17	6	5.14	11.85	12.40	41.25	15.40	47.74	55.52	47.57	58.09	87.72
120.....	8	3.20	7.50	6.50	5.56	12.40	12.95	44.00	17.60	49.94	60.15	51.45	60.78	91.61
130.....	8.5	3.20	7.67	6.67	5.69	12.40	12.95	46.75	17.60	51.07	61.72	52.66	60.78	91.61
140.....	8.5	3.40	8	6.83	5.69	12.95	13.50	46.75	18.70	53.26	63.20	52.66	63.48	95.50
150.....	9	3.40	8.17	6.83	6.11	12.95	13.50	49.50	18.70	54.40	63.20	56.54	63.48	95.50
160.....	9	3.40	8.33	7.33	6.25	13.50	14.10	49.50	18.70	55.45	67.83	57.74	66.18	99.74
170.....	9.5	3.70	8.83	7.67	6.67	13.50	14.10	52.25	20.35	58.79	70.98	61.72	66.18	99.74
180.....	9.5	8.33	8.83	7.67	6.67	14.10	14.65	52.25	45.82	58.79	70.98	61.72	69.12	103.63
190.....	10	8.33	9	8	6.81	14.10	14.65	55.00	45.82	59.92	74.03	63.02	69.12	103.63
200.....	10	8.33	9	8	6.81	14.10	14.65	55.00	45.82	59.92	74.03	63.02	69.12	103.63
210.....	10.5	8.67	9.17	8.17	6.94	14.10	14.65	57.75	47.69	61.05	75.61	64.22	69.12	103.63
220.....	10.5	8.67	9.17	8.17	6.94	14.10	14.65	57.75	47.69	61.05	75.61	64.22	69.12	103.63
230.....	11	9	9.50	8.33	6.94	14.10	14.65	60.50	49.50	63.25	77.09	64.22	69.12	103.63
240.....	11	9	9.50	8.33	6.94	14.10	14.65	60.50	49.50	63.25	77.09	64.22	69.12	103.63
250.....	11.5	9.17	9.67	8.33	7.22	14.10	14.65	63.25	50.44	64.38	77.09	66.81	69.12	103.63
260.....	11.5	9.17	9.67	8.33	7.22	14.10	14.65	63.25	50.44	64.38	77.09	66.81	69.12	103.63
270.....	11.5	9.50	9.83	8.67	7.36	14.10	14.65	63.25	52.25	65.45	80.23	68.11	69.12	103.63
280.....	11.5	9.50	9.83	8.67	7.36	14.65	15.20	63.25	52.25	65.45	80.23	68.11	71.81	107.52
290.....	12	9.67	9.83	8.83	7.50	14.65	15.20	66.00	53.19	65.45	81.71	69.41	71.81	107.52
300.....	12	9.83	9.83	8.83	7.64	14.65	15.20	66.00	54.07	65.45	81.71	70.70	71.81	107.52

Tariff Authority: Agent J. H. Glenn's I. C. C. No. A-4-5.

Wilmington, N. C., Sept. 21, 1926-W.

EXHIBIT No. 21

[fol. 364] I. C. C. Docket No. 18364

Witness: J. W. Perrin

Statement Showing Percentage Relationship that A. C. L. R. R. Interstate Log Rates Bear to Lumber Rates Ordered by the Interstate Commerce Commission in the "Meridian Case," 60 I. C. C., 5; Also to Basic Mileage Scale Applied on Lumber Between Southeastern and Carolina Territories

	A	B		Percentage relationship that A. C. L. R. R. interstate log rates bear to the lumber rates in column	
Miles	Lumber rates prescribed in Meridian case, 60 I. C. C. 5	Basis scale of lumber rates applied between Southeastern and Carolina territories	A. C. L. R. R. interstate rates on logs	A	B
5.....	5	4.5	2.5	50	55.6
10.....	6	5	3	50	60
15.....	6.5	5.5	3.5	53.9	63.6
20.....	7	6	3.5	50	58.4
25.....	7	6.5	4	57.1	61.6
30.....	8	7	4	50	57.1
50.....	9	8.5	5	55.6	58.9
75.....	11.5	10.5	6.5	56.6	61.9
100.....	12.5	11.5	7	56	60.8
125.....	14	13.5	8.5	60.7	63
150.....	15	14.5	9	60	62.1
175.....	17	15.5	9.5	55.9	61.3
200.....	18	16.5	10	55.6	60.6
225.....	....	18	11	....	61.2
250.....	....	19	11.5	....	60.6
275.....	....	20	11.5	....	57.5
300.....	....	20.5	12	....	58.6
325.....	....	22.5	13	....	57.8
350.....	....	23.5	13.5	....	57.5
375.....	....	24	14	....	58.4
400.....	....	24.5	14.5	....	59.2
425.....	....	26.5	15.5	....	58.5
450.....	....	27.5	16	....	58.2

Tariff authority: Agent J. H. Glenn's I. C. C. No. A-415.

Wilmington, N. C., Sept. 21, 1926-W.

[fol. 365]

EXHIBIT No. 22

I. C. C. Docket No. 18364

Witness: J. W. Perrin

Statement Showing Tonnage, Average Distances Hauled, and Revenue Results from the Transportation of Various Commodities of the Lowest Transportation Characteristics Moved on Atlantic Coast Line Railroad During the Month of May, 1926

Commodity	Tons	Percentage of all tonnage	Revenue	Percentage of all freight revenue	Revenue per ton	Average haul (miles)	Revenue per ton per mile	Relation of percentage of all freight revenue to percentage of all tonnage (per cent)
Cotton Seed	3,065	0.13	$4,895.86	0.08	$1.60	78	.0205	61.5
Cotton Seed Hulls	2,101	0.09	3,948.13	0.07	1.88	118	.0159	77.7
Clay	23,254	1.00	31,794.35	0.54	1.37	192	.0071	54
Gravel and Sand	615,737	26.49	541,564.55	9.16	.88	120	.0073	34.5
Stone	36,204	1.56	44,123.04	0.75	1.22	150	.0082	48.1
Asphalt	13,953	0.60	41,736.48	0.71	2.99	263	.0114	118
Salt	1,637	0.07	5,317.18	0.09	3.25	262	.0124	128
Phosphate Rock	190,166	8.18	227,294.04	3.84	1.20	154	.0077	46.9
Cord Wood	22,594	0.97	18,060.17	0.31	.80	66	.0121	31.9
Cross Ties	19,582	0.84	28,310.56	0.48	1.45	115	.0125	57.1
Cement	53,213	2.29	121,023.33	2.05	2.27	243	.0094	89.5
Brick—Artificial Stone	76,631	3.30	137,472.71	2.32	1.79	213	.0084	70
Lime—Plaster	10,576	0.46	22,917.65	0.39	2.17	217	.0100	84.8
Fertilizer	76,160	3.28	162,445.43	2.75	2.13	100	.0213	83.8
Logs	168,756	7.26	121,015.66	2.05	.72	109	.0066	28.4

Wilmington, N. C., September 22, 1926-W.

[fol. 366] EXHIBIT No. 23

I. C. C. Docket No. 18364

Witness. J. W. Perrin

Statement Showing Present and Proposed Rates on Logs, C. L., Between Points on Atlantic Coast Line Railroad in Florida and Points on Atlantic Coast Line Railroad in Georgia. North Florida Includes Points on Atlantic Coast Line Railroad in Florida on and North of Its Line from Jacksonville Through Burnetts Lake and Gainesville to High Springs. South Florida Includes Other Points on Atlantic Coast Line Railroad in Florida

	North Florida			South Florida	
	Present			Present	
Miles	Description A, in cents per 100 pounds	Description B, rates per car expressed in cents per cwt.	Proposed description C, in cents per 100 pounds	Present description D, rates per car expressed in cents per cwt.	Proposed description C, in cents per 100 pounds
5	2.5	....	2.5	.....	....
10	3	....	2.5	.....	....
15	3.5	2.63	3	.....	....
20	3.5	2.75	3	.....	....
25	4	2.88	3.5	.....	....
30	4	2.88	3.5	.....	....
35	4.5	3.25	4	.....	....
40	4.5	3.38	4	.....	....
45	5	3.50	4.5	.....	....
50	5	3.50	4.5	7.10	5
55	5.5	3.75	4.5	7.70	5
60	5.5	3.88	5	7.70	6
65	6	4	5	8.30	6
70	6	4.25	5	8.30	6
75	6.5	4.38	5.5	8.30	6.5
80	6.5	4.50	5.5	8.30	6.5
85	7	4.88	5.5	8.30	6.5
90	7	5	6	8.30	7
95	7	5.13	6	8.50	7
100	7	5.13	6	8.96	7
110	7.5	5.50	6.5	9.17	7.5
120	8	5.63	6.5	9.37	7.5
130	8.5	5.75	7	9.58	8
140	8.5	6	7	10.20	8
150	9	6.13	7.5	10.40	8.5

Miles	North Florida: Present: Description A, in cents per 100 pounds	North Florida: Present: Description B, rates per car expressed in cents per cwt.	North Florida: Proposed description C, in cents per 100 pounds	South Florida: Present description D, rates per car expressed in cents per cwt.	South Florida: Proposed description C, in cents per 100 pounds
160	9	....	7.5	10.40	8.5
170	9.5	....	8	10.80	9
180	9.5	....	8	11.30	9
190	10	....	8.5	11.50	10
200	10	....	8.5	12.30	10
210	10.5	....	9	12.30	10.5
220	10.5	....	9	12.30	10.5
230	11	....	9.5	12.30	11
240	11	....	9.5	12.90	11
250	11.5	....	10	12.90	11.5
260	11.5	....	10	12.90	11.5
270	11.5	....	10.5	13.80	12
280	11.5	....	10.5	13.80	12
290	12	....	11	14.20	12.5

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300	12	....	11	11.20	12.5
310	12.5	....	11.5	14.20	13
320	12.5	....	11.5	14.20	13
330	13	....	12	14.80	14
340	13	....	12	14.80	14
350	13.5	....	12.5	14.80	14.5
360	13.5	....	12.5	14.80	14.5
370	14	....	13	15.20	15
380	14	....	13	16	15
390	14.5	....	13.5	16.50	15.5
400	14.5	....	13.5	17.10	15.5
410	15	....	14	17.70	16
420	15	....	14	18.30	16
430	15.5	....	14.5	18.80	16.5
440	15.5	....	14.5	19.60	16.5
450	16	....	15	19.80	17

Descriptions and Tariff Authorities

Present:

A—Logs (except walnut, cherry and cedar), C. L., minimum weight 40,000 pounds, in cents per 100 pounds. Agent J. H. Glenn's I. C. C. No. A-415.

B—Logs (not hewn or sawn, nor piling nor poles) and short length blocks, round or split, when for manufacture and product reshipped, per car 40,000 pounds, excess in proportion. (When logs are not manufactured and product not reshipped, apply rates shown in mileage scale on page 48 of Supplement 27 to Agent J. H. Glenn's I. C. C. No. A-415; when blocks are not manufactured and product reshipped, apply rates shown in A. C. L. R. R. I. C. C. No. B-2112, G. F. O. No. 12 and I. C. C. No. B-2103, G. F. O. No. 14, Supplements thereto or reissue thereof). Agent J. H. Glenn's I. C. C. No. A-415. Applicable only to Bainbridge, Thomasville and Metcalf, Ga.

D—Logs, all kinds (except mahogany, cedar, cherry and walnut), C. L., minimum weight 30,000 lbs., Class "P" per 24,000 pounds, A. C. L. R. R. I. C. C. No. B-2103, with Notes A and 8 Exceptions to Southern Classification. Agent E. H. Dulaney's I. C. C. No. 20.

Proposed:

C—Logs (except walnut, cherry and cedar), C. L., minimum weight 40,000 pounds, in cents per 100 pounds.

Wilmington, N. C., October 1, 1926-W.

[fol. 368]

EXHIBIT No. 24

I. C. C. Docket No. 18364

Witness: J. W. Perrin

Statement Comparing Alabama Intrastate Scale on Logs, C. L. (Proposed to Apply Between Points in North Florida and Points in Georgia) with Scales Prescribed by Interstate Commerce Commission; Also with the Suspended Scale of the Georgia Public Service Commission; Also with the General Interstate Scale of Southern Railway

Rates Expressed in Cents per 100 Pounds

Miles	To Meridian, Miss. (60 I. C. C. 5)	From Sou. Ry. in S. C. to Savannah (59 I. C. C. 81)	From A. C. L. R. R. in S. C. to A. C. L. R. R. in N. C. (62 I. C. C. 69)	Intrastate in Ga. (Georgia Com. Order 4-15-25) (suspended)	Intrastate in Alabama	Sou. Ry. interstate (Sou. Ry. I. C. C. No. A-9783
5	2.9	2.88	....	2.5	2.5	2.5
10	3.1	2.88	....	3	2.5	2.5
15	3.4	3.25	....	3	3	3.5
20	3.8	3.25	....	3.5	3	3.5
25	4	3.50	....	3.5	3.5	3.5
30	4.3	3.50	....	4	3.5	3.5
35	4.4	4	....	4	4	4
40	4.5	4	....	4	4	4
45	4.6	4.25	....	4.5	4.5	4.5
50	4.9	4.25	....	4.5	4.5	4.5
55	5	4.63	....	4.5	4.5	4.5
60	5.1	4.63	....	5	5	4.5
65	5.1	5	....	5	5	5
70	5.4	5	....	5	5	5
75	5.5	5.38	....	5.5	5.5	5

Exhibit No. 24—Continued

Miles	To Meridian, Miss. (60 I. C. C. 5)	From Sou. Ry. in S. C. to Savannah (59 I. C. C. 81)	From A. C. L. R. R. in S. C. to A. C. L. R. R. in N. C. (62 I. C. C. 69)	Intrastate in Ga. (Georgia Com. Order 4-15-25) (suspended)	Intrastate in Alabama	Sou. Ry. interstate (Sou. Ry. I. C. C. No. A-9783
80	5.6	5.38	....	5.5	5.5	5
85	5.8	5.63	....	5.5	5.5	6
90	6	5.63	....	6	6	6
95	6.1	6.13	....	6	6	6.5
100	6.3	6.13	6.5	6	6	6.5
110	6.5	6.25	6.5	6.5	6.5	6.5
120	6.8	6.75	7	6.5	6.5	7
130	7.1	7.13	7	7	7	7
140	7.4	7.38	7.5	7	7	7
150	7.6	7.75	8	7.5	7.5	8
160	7.9	....	8	7.5	7.5	8
170	8.3	....	8.5	8	8	8.5
180	8.5	....	9	8	8	9
190	8.8	....	9.5	8.5	8.5	9
200	9	....	10	8.5	8.5	9.5
210	...	....	10	9	9	10.5
220	...	....	10.5	9	9	10.5
230	...	....	11	9.5	9.5	11
240	...	....	11	9.5	9.5	11
250	...	....	11.5	10	10	11.5
260	...	....	11.5	10	10	11.5
270	...	....	11.5	10.5	10.5	11.5
280	...	....	12	10.5	10.5	12.5
290	...	....	12	11	11	13
300	...	....	12.5	11	11	13

[fol. 369]

310	...	....	12.5	11.5	11.5	13.5
320	...	....	13	11.5	11.5	13.5
330	...	....	13.5	12	12	13.5
340	...	....	13.5	12	12	13.5
350	...	....	14	12.5	12.5	14
360	...	....	14	12.5	12.5	14
370	...	....	14.5	13	13	15
380	...	....	14.5	13	13	15
390	...	....	15	13.5	13.5	15
400	...	....	15	13.5	13.5	15
410	...	....	....	14	14	15.5
420	...	....	....	14	14	15.5
430	...	....	....	14.5	14.5	16
440	...	....	....	14.5	14.5	16
450	...	....	....	15	15	16

Wilmington, N. C., October 1, 1926-W.

[fol. 370] EXHIBIT No. 25—Revised

I. C. C. Docket No. 18364

(Items A to K, Inclusive)

Witness: J. Lowell White

Statement (Item K) Showing Estimated Cost of Log Service Performed by Atlantic Coast Railroad Company for Brooks-Scanlon Corporation from Perry and Carbur to Eastport, Fla., in Month of September, 1926

From Item A—Cost of Road Movement	$7,196
Item B—Cost of Yard Handling	1,429
Item C—Cost of Interest and Depreciation: Locomotives	572
Item E—Cost of Maintenance: Locomotives	3,423
Item G—Cost of Maintenance: Roadway	1,386
	$14,006
Less, Account Other Traffic Hauled 3.8%	532
	$13,474
Item C—Cost of Interest and Depreciation on Cars	624
Item F—Cost of Car Hire Under Contract (75 cars)	1,072
Item H—Cost of Car Maintenance	1,723
Estimated Total Direct Cost	$16,893
Item I—Add 27.7% of $16,893 for indirect Cost	4,679
	$21,572
Item J—Add for Taxes	4,749
	$26,321
Item D—Number of Loaded Cars Hauled	1,371
Estimated cost per loaded car, not including interest on property under other than equipment	$19.13

Office of Superintendent Transportation System, Wilmington, N. C., November 1st, 1926.

[fol. 371] EXHIBIT No. 25

I. C. C. Docket No. 18364

Witness: J. Lowell White

Detail of Item A

Wage Expense of Brooks-Scanlon Corporation Trains Between Jacksonville and Perry and Carbur, September, 1926

	North loaded		South loaded	
Date	To	Amount	Date	Amount
1st	Perry	$60.19	1st	$50.84
2nd	Perry	55.88	2nd	50.84
			2nd	49.23
3rd	Perry	54.64	3rd	50.83
3rd	Carbur	56.62		
4th	Perry	58.10		
			5th	54.68
6th	Perry	65.70	6th	50.83
7th	Perry	59.87	7th	50.83
8th	Perry	54.65	8th	50.83
			8th	45.65
9th	Perry	58.51	9th	50.84
9th	Carbur	52.94		
10th	Perry	58.80	10th	59.61
11th	Perry	65.03		
			12th	50.83
13th	Perry	69.01	13th	50.83
14th	Perry	63.00	14th	50.83
15th	Perry	19.43	15th	50.83
15th	Carbur	54.56	15th	45.66
16th	Perry	67.84	16th	50.83
17th	Perry	57.65	17th	57.66
			18th	57.83
			19th	50.83
20th	Carbur	50.66	20th	38.70
20th	Perry	58.24	20th	55.46
21st	Perry	57.17	20th	56.91
22nd	Perry	54.64	22nd	55.25

Exhibit No. 25—Continued

	North loaded		South loaded	
Date	To	Amount	Date	Amount
23rd	Perry	54.74	23rd	53.30
24th	Perry	54.65	24th	50.83
25th	Perry	54.65	25th	74.67
			26th	62.51
27th	Perry	54.66	27th	50.83
27th	Carbur	53.38		
28th	Perry	48.64	28th	50.83
29th	Perry	60.19	29th	50.83
30th	Perry	54.64	30th	50.83
		$1,688.68		$1,682.09
				1,688.68
	Total			$3,370.77

This information taken from time tickets of conductors and enginemen.

Cost of supplies used as furnished by Master Mechanic at Jacksonville as per statement below	3,574.30
Cost of turning engines at Moncrief as furnished by Master Mechanic at Jacksonville per statement below	251.41
Grand total	$7,196.48

Cost of Supplies

Brooks-Scanlon to Perry and return:

22 tons coal	at	$5.35	$117.70
7 pints Eng. oil	"	.04	.28
6 pints oil	"	.08	.48
2 pts. oil	"	.04	.08
1 lb. waste	"	.08	.08
2 lb. grease	"	.16	.32
			$118.94

Exhibit No. 25—Continued

To Carbur:

19 tons coal	at	$5.35	$101.65
5¼ pts. oil	"	.08	.42
6¾ pts. oil	"	.04	.27
2 pts. oil	"	.04	.08
1 lb. waste	"	.08	.08
2 lb. grease	"	.16	.32
			$102.82

26 trips at $118.94	$3,060.20
5 trips at $102.82	514.10
Total cost of supplies	$3,574.30

Cost of Turning Engines

Labor at $3.61 per trip.
Material " 4.50 per trip.

31 trips	"	$8.11	$251.41	$251.41

[fol. 372] Exhibit No. 25, Revised

I. C. C. Docket No. 18364

Witness: J. Lowell White

(Sheet 1)

Item B

Yard movement:

Wages, 3 8 hour crews	@	$31.24	$93.72
Fuel, 24 hours X 6 miles	@	.21246 per mile	30.59
Repairs " " " " "	@	.33966 per mile	
Engine House Expense 24 hours X 6 miles	@	.04309 per mile	
Oil and supplies 24 hours X 6 miles	@	.01016 per mile	
144 Miles	@	.39291 per mile	56.58

Exhibit No. 25—Continued

1/365	Interest (6%) and depreciation (3%) on $1,4275 (Cost of engine No. 700 in 1901) ..	3.52
	Total for 24 hours	$184.41
	Total for 1 hour	7.684
	Total for 1 minute	.128
	Between Milldale and Eastport, 31 trips @ 6 hours per train load = 186 hours; 186 hours @ $7.684=	$1,429.22

Above costs per mile based on Mechanical Department Form 2903 for August (the latest report outstanding).

Item C

Interest and depreciation on equipment:

Locomotives:

Interest, 6% on 5 loco. (@ $22,566 cost price), total investment $112,830 — for 1 month	$564.15
Depreciation, 3% on 5 loco. (@ $22,566 cost price), total investment $112,830 = for 1 month	282.07
	$846.22
Divided: Brooks-Scanlon #67.6%	$572.02

Cars:

Brooks-Scanlon, Interest, 6% on 100 cars (@ $833 cost price), total $83,330 = for 1 Month	$416.50
Depreciation, 3% on 100 cars (@ $833 cost price), total $83,330 = for 1 month	208.25
Total Interest and Depreciation	$624.75

#For basis see Item D.

[fol. 373]

EXHIBIT No. 25, REVISED

I. C. C. Docket No. 18364

Witness: J. Lowell White

Brooks-Scanlon Corporation

Detail of Item D

Date, Sept., 1926	From	To	Train miles	Log cars		Total cars	Log-car miles		Other car miles	Cab and idler car miles	Total car miles
				Loaded	Empty		Loaded	Empty			
1st	Perry.....	East Port.....	166	49	0	51	7,343	0	0	318	7,661
1st	East Port.....	Perry	159	0	60	62	0	9,060	0	318	9,378
2nd	Perry.....	East Port.....	166	44	0	46	6,804	0	0	318	7,122
2nd	East Port.....	Carbur	144	0	7	10	0	1,001	143	286	1,430
2nd	East Port.....	Perry	159	0	42	44	0	6,321	0	318	6,639
3rd	Carbur.....	East Port.....	144	44	0	46	4,732	0	0	286	5,018
3rd	Perry.....	East Port.....	166	44	0	46	6,774	0	0	318	7,092
3rd	East Port.....	Perry	159	0	39	45	0	5,822	452	318	6,592
4th	Perry.....	East Port.....	166	44	0	46	6,177	0	0	318	6,495
5th	East Port.....	Perry	159	0	62	72	0	8,766	616	318	9,700
6th	Perry.....	East Port.....	166	44	0	47	6,708	0	77	318	7,103
6th	East Port.....	Perry	159	0	60	62	0	9,000	0	318	9,318
7th	Perry.....	East Port.....	166	49	0	51	7,274	0	0	318	7,592
7th	East Port.....	Perry	159	0	57	59	0	8,599	0	318	8,917
8th	Perry.....	East Port.....	166	44	0	46	6,817	0	0	318	7,135
8th	East Port.....	Perry	159	0	46	50	0	6,918	318	318	7,554

Exhibit No. 25, Revised—Continued

Date, Sept., 1926	From	To	Train miles	Log cars		Total cars	Log-car miles		Other car miles	Cab and idler car miles	Total car miles
				Loaded	Empty		Loaded	Empty			
8th	East Port.....	Carbur	144	0	0	42	0	0	2,480	282	2,762
9th	East Port.....	Perry	159	0	55	58	0	8,095	68	318	8,481
9th	Carbur.....	East Port.....	144	43	2	47	6,242	16	0	302	6,560
9th	Perry.....	East Port.....	166	39	0	41	5,931	0	0	318	6,249
10th	Perry.....	East Port.....	166	44	0	48	6,654	0	88	318	7,060
10th	East Port.....	Perry	159	0	60	63	0	9,029	50	318	9,397
11th	Perry.....	East Port.....	166	46	0	50	6,947	0	113	336	7,396
12th	East Port.....	Perry	159	0	64	70	0	9,550	324	318	10,192
14th	Perry.....	East Port.....	166	44	0	46	6,520	0	0	318	6,838
13th	East Port.....	Perry	159	0	53	60	0	7,959	669	318	8,946
14th	Perry.....	East Port.....	166	44	0	46	6,874	0	0	338	7,212
14th	East Port.....	Perry	159	0	46	48	0	6,882	0	318	7,200
15th	Carbur.....	East Port.....	144	44	0	46	6,292	0	0	286	6,578
15th	Perry.....	East Port.....	166	44	0	46	6,041	0	0	318	6,359
15th	East Port.....	Perry	159	0	52	54	0	7,800	0	318	8,118
15th	East Port.....	Carbur	144	0	34	36	0	3,910	0	286	4,196
16th	Perry.....	East Port.....	166	40	0	42	6,326	0	0	318	6,644
16th	East Port.....	Perry	159	0	57	59	0	7,945	0	318	8,263
17th	Perry.....	East Port.....	166	44	0	46	6,902	0	0	318	7,220
17th	East Port.....	Perry	159	0	68	70	0	7,682	0	318	8,000
18th	Perry.....	East Port.....	166	44	0	46	5,987	0	0	318	6,305
19th	East Port.....	Perry	159	0	50	52	0	7,290	0	318	7,608
19th	East Port.....	Carbur	144	0	0	60	0	0	4,103	286	4,389
20th	Perry.....	East Port.....	166	50	0	52	7,986	0	0	318	7,404
20th	Carbur.....	East Port.....	144	44	0	46	6,204	0	0	286	6,490
20th	East Port.....	Perry	159	0	52	54	0	7,770	0	318	8,088
21st	Perry.....	East Port.....	166	44	0	46	6,586	0	0	318	6,904

21st	East Port.....	Perry	159	0	61	63	0	9,093	0	318	9,411
22nd	Perry.....	East Port.....	166	44	0	46	6,711	0	0	318	7,029
22nd	East Port.....	Perry	159	0	51	56	0	7,428	299	318	8,045
23rd	Perry.....	East Port.....	166	44	0	46	6,996	0	0	318	7,314
23rd	East Port.....	Perry	159	0	58	60	0	8,251	0	318	8,569
24th	Perry.....	East Port.....	166	43	0	46	6,53[illegible]	0	124	318	6,981
24th	East Port.....	Perry	159	0	58	62	0	8,664	200	318	9,182
25th	Perry.....	East Port.....	166	44	0	46	6,654	0	0	318	6,972
25th	East Port.....	Carbur	144	0	49	67	0	6,659	1,168	282	8,109
26th	East Port.....	Perry	159	0	23	94	0	345	5,157	318	5,820
27th	Perry.....	East Port.....	166	43	0	45	6,428	0	0	318	6,746
27th	Carbur.....	East Port.....	144	44	0	46	6,204	0	0	282	6,486
27th	East Port.....	Perry	159	0	45	47	0	6,803	0	318	7,121
28th	Perry.....	East Port.....	166	44	0	46	6,660	0	0	318	6,978
28th	East Port.....	Perry	159	0	47	51	0	7,059	207	318	7,584
29th	Perry.....	East Port.....	166	45	0	47	6,853	0	0	318	7,171
29th	East Port.....	Perry	159	0	69	71	0	9,711	0	318	10,029
30th	Perry.....	East Port.....	166	44	0	46	6,618	0	0	318	6,936
30th	East Port.....	Perry	159	0	48	53	0	7,200	368	318	7,886
	Total.....		9,890	1,371	1,475	3,195	202,884	210,628	17,024	19,438	449,974

Office of Supt. Transportation—System.

[fol. 374] (Sheet 2)

Item D

Log-car Miles as Related to Total Car Miles in Log Trains—(September 1926)

Total Car miles in Putnam trains	215,285	= (32.4%)
Total Car Miles in Brooks-Scanlon trains	449,974	= (67.6%)
Grand Total	665,259	= (100 %)

Total Log and Idler Car Miles (Loaded and Empty), Brooks-Scanlon

Loaded	202,884
Empty	210,628
Idler	19,438
	432,950

Ratio

B. S. log and idler car miles to B. S. total =	96.2%
Other traffic car miles to B. S. total =	3.8%

Item E

Maintenance of Equipment (Locomotives)

Train Mileage by Log Trains in September

Putnam	5,019
Brooks-Scanlon	9,890
	14,909

14,909 miles @ 33.966¢ (average cost loco. repairs per engine mile) = $5,063.99 (same basis as item B).

Brooks-Scanlon: Charge #67.6% = $3,423.

For basis see Item D.

Item F

Contract Mileage Earnings Made by Brooks-Scanlon Cars in September, 1926

Car-miles				
Loaded	Empty	Total	Rate	Amount
89,442	89,194	178,636	$ .006	$1,071.82

Item G

Maintenance of Roadway

Distance, Perry to Moncrief, 158.0.
158 miles = 19.7 sections.

8 miles
19.7 sections X $104 = $2,050 per month.
Divide: Brooks-Scanlon, #67.6% = $1,386.

[fol. 375] (Sheet 3)

Item H

Maintenance of Equipment

Cost of repairs to assigned equipment for 12 months (Moncrief)	$13,600
For 1 month	$1,133
Cost of repairmen at Eastport, Carbur and Perry for 1 month	731
	$1,864
Less average monthly bill against B. S. Corpn	141
	$1,723

Office of Superintendent Transportation, Wilmington, N. C., November 1st, 1926.

For basis see Item D.

[fol. 376]

EXHIBIT No. 25

I. C. C. Docket No. 18364

Witness J. Lowell White

(Sheet 1 of 3)

Detail of Item I

	Account No.	Indirect	Direct
I. Maintenance of way and structures:			
Superintendence	201	$244,537	.....
Roadway maintenance	202	.....	$655,636
Bridges, trestles, and culverts	208	406,752	.....
Ties	212	.....	1,007,369
Rails	214	.....	450,798
Other track material	216	.....	418,488
Ballast	218	.....	163,583
Track laying and surfacing	220	.....	1,809,146
Right-of-way fences	221	14,004	.....
Crossings and signs	225	42,355	.....
Stations and office buildings	227	.....	322,306
Roadway buildings	229	85,721	.....
Water stations	231	127,830	.....
Fuel stations	233	27,894	.....
Shops and engine houses	235	73,620	.....
Wharves and docks	241	.....	81,380
Telegraph and telephone lines	247	66,769	.....
Signals and interlockers	249	123,517	.....
Miscellaneous structures	265	4,266	.....
Paving	267	.....	13,666
Roadway machines	269	71,644	.....
Small tools and supplies	271	.....	88,266
Removing snow, ice, and sand	272	5,348	.....
Assessments for public improvements	273	.....	4,353
Injuries to persons	274	14,926	.....
Insurance	275	27,363	.....
Stationery and printing	276	9,683	.....
Other expenses	277	.....	812
Maintaining joint tracks, yards, and other facilities—Dr.	278	.....	33,346
Maintaining joint tracks, yards, and other facilities—Cr.	279	178,567*	.....
Equalization—Way and Structures—Ties and Rails	280	.....	321,214*
Total maintenance of way and structures		1,167,662	4,727,935
II. Maintenance of equipment:			
Superintendence	301	245,431	.....
Shop machinery	302	191,868	.....
Steam locomotives—Repairs	308	.....	2,725,833
Steam locomotives—Depreciation	309	.....	326,198

[*Red in copy.]

Exhibit 25—Continued

	Account No.	Indirect	Direct
Steam locomotives—Retirements	310	2,239	.....
Freight-train cars—Repairs	314	.....	3,980,831
Freight-train cars—Depreciation	315	.....	819,337
Freight-train cars—Retirements	316	13,147	.....
Floating equipment—Repairs	323	.....	6,819
Floating equipment—Depreciation	324	.....	1,616
Work equipment—Repairs	326	137,015	.....
Work equipment—Depreciation	327	18,311	.....
Work equipment—Retirements	328	7,003	.....
Injuries to persons	332	14,944	.....
Insurance	333	37,025	.....
Stationery and printing	334	16,664	.....
Other Expenses	335	4,774	.....
Maintaining joint equipment at terminals—Dr.	336	.....	3,109
Maintaining joint equipment at terminals—Cr.	337	.....	1,805*
Total maintenance of equipment		688,421	7,861,938

[fol. 377] (Sheet 2 of 3)

III. Traffic:			
Superintendence	351	311,733	.....
Outside agencies	352	.....	281,523
Advertising	353	.....	1,451
Traffic associations	354	.....	31,767
Industrial and immigration bureaus	356	.....	7,107
Insurance	357	.....	55
Stationery and printing	358	112,793	.....
Total traffic		424,526	321,903
IV. Transportation rail line:			
Superintendence	371	574,507	.....
Dispatching trains	372	280,252	.....
Station employees	373	.....	2,940,911
Weighing, inspection, and demurrage bureaus	374	94,807	.....
Station supplies and expenses	376	.....	218,441
Yard masters and yard clerks	377	758,709	.....
Yard conductors and brakemen	378	.....	1,247,958
Yard switch and signal tenders	379	18,000	.....
Yard enginemen	380	.....	815,146
Fuel for yard locomotives	382	.....	622,916
Water for yard locomotives	385	34,965	.....
Lubricants for yard locomotives	386	.....	11,051
Other supplies for yard locomotives	387	.....	13,314
Engine-house expenses—Yard	388	.....	199,866
Yard supplies and expenses	389	42,664	.....
Operating joint yards and terminals—Dr.	390	.....	110,853
Operating joint yards and terminals—Cr.	391	.....	156,097*
Train enginemen	392	.....	1,671,327
Fuel for train locomotives	394	.....	2,584,571

[*Red in Copy]

Exhibit No. 25—Continued

	Account No.	Indirect	Direct
Water for train locomotives	397	.....	103,223
Lubricants for train locomotive	398	.....	56,740
Other supplies for train locomotives	399	.....	49,238
Engine-house expenses—Train	400	.....	453,903
Trainmen	401	.....	2,173,602
Train supplies and expenses	402	256,893	.....
Signal and interlocker operations	404	46,877	.....
Crossing protection	405	50,072	.....
Drawbridge operation	406	.....	17,424
Telegraph and telephone operation	407	14,146	.....
Operating floating equipment	408	.....	21,161
Stationery and printing	410	140,014	.....
Other expenses	411	28,937	.....
Operating joint tracks and facilities—Dr.	412	.....	9,343
Operating joint tracks and facilities—Cr.	413	.....	87,597*
Insurance	414	49,844	.....
Clearing wrecks	415	159,169	.....
Damage to property	416	49,847	.....
Damage to live stock on right-of-way	417	53,152	.....
Loss and damage—Freight	418	625,686	.....
Injuries to persons	420	638,007	.....
Total transportation rail line		3,906,548	13,077,294

[fol. 378] (Sheet 3 of 3)

VII. General:			
Salaries and expenses of general officers	451	101,989	.....
Salaries and expenses of clerks and attendants	452	537,705	.....
General office supplies and expenses	453	20,108	.....
Law expenses	454	148,507	.....
Insurance	455	520	.....
Relief department expenses	456	33,486	.....
Pensions	457	40,831	.....
Stationery and printing	458	65,275	.....
Valuation expenses	459	28,880	.....
Other expenses	460	40,742	.....
General joint facilities—Dr.	461	1,062	.....
General joint facilities—Cr.	462	629*	.....
Total general expenses		1,018,476	.....

Proportion Expense Charged to "Freight" January to August, 1926 (Inc.)

	Account No.	Indirect	Direct	Total
Maintenance of way and structures	201-280	$1,167,662	$4,727,935	$5,895,597
Maintenance of Equipment	301-337	688,421	7,861,938	8,550,359
Traffic	351-359	424,526	321,903	746,429
Transportation	371-420	3,906,548	13,077,294	16,983,842
General	451-462	1,018,476	.....	1,018,476
Grand total	.....	$7,205,633	$25,989,070	$33,194,703

The "Indirect" expense above is 27.7% of the "Direct" expense.

[*Red in copy.]

Office of Supt. Transportation System, October 28th, 1926, Wilmington, N. C.

[fol. 379] EXHIBIT No. 25, REVISED

I. C. C. Docket No. 18364

Witness: J. Lowell White

Detail of Item J—Taxes

a. Total loaded and empty revenue freight-car miles in 1925...	411,399,089
% of empty to total mileage.....	37.6%
b. Total A. C. L. taxes in 1925 (as reported to I. C. C.).....	$6,600,000
c. 68.38% of total taxes (Production of total operating expenses charged to freight).....	$4,513,080
$\frac{a}{c}$ = taxes per loaded and empty car mile.....	$.01097
Loaded and empty log and idle car mileage 432,950 x $.01097.	$4749.46

$\frac{\$4747 \text{ (Cost of Taxes}}{1371 \text{ (Loaded log cars)}} = \$3.46$ per car.

Office of Superintendent Transportation System, Wilmington, N. C., November 1st, 1926.

[fol. 380] No. 18364

In the Commission's Docket file there are four carbon copy sheets of figures which are marked Exhibit 25 and show detail of costs of transportation under the headings Items A to J inclusive. These do not bear the stenographer's formal stamp as received. There is also included in the file a revised Exhibit 25 which is marked as received in evidence by Examiner Hillyer. Evidently this is a revision of the entire exhibit including the four carbon sheets and apparently the revised Exhibit 25 should be sufficient for the purpose of the record on appeal.

August G. Gutheim.

[fol. 381] EXHIBIT #26

BEFORE INTERSTATE COMMERCE COMMISSION

Docket #18364

GEORGIA PUBLIC SERVICE COMMISSION

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

Exhibit 2

Cummer Cypress Company, Jacksonville, Florida.

[fol. 382] This agreement made the 29th day of June, in the year one thousand nine hundred and three, between the Jacksonville and Southwestern Railroad Company, party of the first part and the Cummer Lumber Company, party of the second part,

Witnesseth:

Whereas, the parties of the first and second parts in conjunction with Wellington W. Cummer and Charles W. Chase have entered into an agreement bearing even date herewith for the sale to the said Charles W. Chase of the stock of the party hereto of the first part and for other purposes.

Now, therefore, in consideration of the premises and of the covenants and undertakings expressed in said agreement and of the sum of One Dollar to each of the parties hereto in hand paid by the other,

It is agreed:

First. The party of the first part shall transport over its line of railway all freights consigned to it by the party of the second part for the period of fifteen years from the date of this agreemnet at the following rates:

Logs

Logs, per car of 50,000 lbs., minimum, for a distance of forty (40) miles or less ..... $6.00 per car

[fol. 383] For a distance sixty miles and over forty (40) miles ..... 7.00 per car

For a distance under ninety (90) miles and over sixty (60) miles	8.00 per car
For each additional ten (10) miles and over ninety (90) miles an additional charge of	1.00 per car

Provided the rate from the Suwannee River to Milldale shall not exceed ten dollars ($10.00) per car.

Wood

Wood in carload lots of 40,000 lbs., minimum for a distance of twenty (20) miles and under	$6.00
For distances under forty (40) miles and over twenty (20) miles	7.00
For distances under ninety (90) miles and over forty (40) miles	9.00
For distances under one hundred and ten (110) miles and over ninety (90) miles	10.00

Provided that the rate shall not exceed ten dollars ($10.00) per car from the Suwannee River to Milldale.

For all wood for Jacksonville delivery, there shall be added the actual terminal charges per car to the above rates.

Phosphates

The party of the second part shall be given as low a net rate on phosphates as may be given to any other shipper or shippers, directly or indirectly, and the rate charged by the party of the first part on phosphate shipments shall not be higher than that charged shippers from the same territory by other railway lines. If such rates on phosphates are not given, the party of the second part shall not be required to deliver phosphates to the party of the first part for shipment; but the failure of the party of the second part to deliver phosphate to the party of the first part for shipment, under such circumstances, shall not in any way affect the terms and conditions of this agreement as to the transportation of other freights consigned to the party of the first part.

[fol. 384] Second. The party of the first part further agrees to furnish annually transportation over its lines of railway for a period of fifteen years for not to exceed ten

persons who are officers and superintendents of the party of the second part. But it is understood that the persons so transported shall, by accepting such transportation, absolve the party of the first part from all liability for damages to their persons or their property incurred during such transportation.

In witness whereof, the parties hereto have caused these presents to be signed by their respective presidents or vice-presidents and their corporate seals to be hereto affixed in duplicate, the day and year first above written.

Jacksonville & South Western Railroad Company, by Wellington W. Cummer, President. Attest: Arthur G. Cummer, Secy. (Seal.) Cummer Lumber Company, by Wellington W. Cummer, Vice-President. Attest: Waldo E. Cummer, Asst. Secy. (Seal.)

[fol. 385] STATE OF NEW YORK,
County of New York, ss:

I, Edwin F. Corey, a Commissioner of Deeds for the State of Florida, residing in the aforesaid State and County, and duly commissioned, do hereby certify that on this day personally appeared before me Wellington W. Cummer and Arthur G. Cummer, known to me, who severally acknowledged before me that they are respectively the President and Secretary of the Jacksonville and Southwestern Railroad Company, and that the seal attached to said instrument is the corporate seal of said Railroad Company, and that they executed said instrument in the name of said Company and as its act and deed, and for the uses and purposes therein contained and expressed.

And I do hereby further certify that on this day personally appeared before me Wellington W. Cummer and Waldo E. Cummer, known to me, and severally acknowledged before me that they are the Vice-President and Assistant Secretary respectively of the Cummer Lumber Company, one of the parties to the foregoing agreement, and that the seal thereto affixed is the corporate seal of the said Cummer Lumber Company, and that as such Vice-President [fol. 386] and Assistant Secretary they executed the said agreement for and on behalf of said Company, and for the uses and purposes therein contained.

In witness whereof, I have hereunto set my hand and affixed my official seal in the City of New York, State of New York, on this 29th day of June, A. D. 1903.

Edwin F. Corey, Commissioner for the State of Florida. Office No. 56 Wall Street, New York City. (Seal.)

[fol. 387] EXHIBIT # 27

BEFORE INTERSTATE COMMERCE COMMISSION

Docket #18364

GEORGIA PUBLIC SERVICE COMMISSION

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

Exhibit 1

Cummer Cypress Company, Jacksonville, Florida

[fol. 388] Atlantic Coast Line Railroad Company, 71 Broadway, New York

H. Walters, Chairman of the Board

November 8th, 1909.

Mr. A. G. Cummer, Cummer Lumber Co., Jacksonville, Fla.

MY DEAR MR. CUMMER: I am in receipt of your telegram and letter of November 6th and promptly replied as follows:

"We appreciate your telegram and assure you the redemption of the Freight Certificates will in no way affect the carrying out of the terms of the agreement of June twenty-ninth, nineteen hundred and three. These traffic agreements will be referred to in any mortgage placed upon the property. Will confirm by letter."

The above telegram fully expresses our views. I can assure you we have no more desire than you have to make any change in the traffic agreements of June 29th, 1903, as we

consider them quite as advantageous to us as they are to you, and, as I wired you, in accordance with our agreement, we will refer to these contracts in any mortgage which we place upon the property. Any agreements made by the Jacksonville & Southwestern are just as binding on the Atlantic Coast Line Railroad Company, its successor.

Yours very truly, H. Walters, Chairman.

[fol. 389] EXHIBIT #28

BEFORE INTERSTATE COMMERCE COMMISSION

Docket #18364

GEORGIA PUBLIC SERVICE COMMISSSION

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

Exhibit 3

Cummer Cypress Company, Jacksonville, Florida

[fol. 390] Atlantic Coast Line Railroad Company, Office of General Superintendent, Third Division, Jacksonville, Fla.

O. H. Page, General Superintendent.

File No. 59700

August 27, 1926. TB-H.

Re special log-train service for the Cummer Cypress Company between Otter Creek and Lacoochee, Florida

Cummer Cypress Co., Jacksonville, Fla.

GENTLEMEN: Referring to your letter of April 26th, returning to me duly executed on behalf of your Company contract dated March 20, 1926, covering special log train service for your Company between Otter Creek and Lacoochee, Fla., in connection with which contract bond has been furnished in the sum of $10,000.00, through the Fidelity

and Casualty Company of New York. The agreement, it will be noted, is made effective June 19, 1926.

It is further noted that the Railroad agrees to permit your company at its sole cost and expense to equip 100 of the Railroad's flat cars with permanent stanchions of a type to insure safe handling of the logs, the cost and expense of installing and maintaining the permanent stanchions on the cars to be borne by your Company. It is, of course, understood and agreed that the 100 cars are not to be considered as permanently assigned to use by your Company, but that in time of car shortage the Railroad will furnish to your Company such proportion of the said 100 cars as is in accordance with the laws and rules and regulations governing during the time of such car shortage.

Yours truly, O. H. Page, General Superintendent.

[fol. 391] This agreement, made and entered into, in duplicate, this 20th day of March, A. D. 1926, by and between the Atlantic Coast Line Railroad Company, a corporation under the laws of the State of Virginia, hereinafter called the Railroad, party of the first part, and the Cummer Cypress Company, a corporation under the laws of the State of Florida, hereinafter called the Cypress Company, party of the second part:

Witnesseth: That

Whereas, the Cypress Company owns approximately Thirty Five Million feet of Cypress standing timber in Levy County, Florida, near Otter Creek, on the line of the Atlantic Coast Line Railroad Company between Wilcox Junction and Dunnellon in said State, which said timber the Cypress Company proposes to cut into logs and thereafter cause the same to be transported in train load lots to Lacoochee, Florida, at which point the said logs will be manufactured into lumber, and in connection with the transportation of said logs desires the Railroad to transport same from a sidetrack hereinafter mentioned, constructed near Otter Creek, over the lines of the Railroad known as the Wilcox Junction-Dunnellon Branch to Dunnellon, Florida, thence over Main Line of Lakeland District from Dunnellon to Trilby, Florida, and thence over Trilby Branch of the Jacksonville District to Lacoochee, Florida, to a certain track already constructed by the Cypress Com-

pany at Lacoochee, Florida, at which point the logs are to be delivered to the Cypress Company for unloading; and

Whereas, the Cypress Company has built, or proposes to build, a spur track leading from the said sidetrack already constructed near Otter Creek into the woods and into the Logging camps of the Cypress Company, and desires the right to connect said spur track to the said sidetrack near Otter Creek, so that cars from the Railroad may be carried by the Cypress Company into the woods for loading and thereafter returned and delivered to the Railroad on the sidetrack at Otter Creek.

Now, therefore, for and in consideration of the premises and agreements hereinafter contained, to be mutually kept and performed, and in further consideration of the sum of One Dollar ($1.00) by each of the parties to the other paid, the parties hereto have mutually covenanted and agreed as follows:

First. The sidetrack at Otter Creek, Florida, on which cars are to be delivered to and received from the Cypress Company hereunder, was constructed or is to be constructed and thereafter maintained in accordance with contract dated February 7th, 1923, shown in red on blueprint attached hereto as a part hereof.

Second. The Railroad will furnish to the Cypress Company on the said sidetrack, flat cars to be loaded by the Cypress Company with logs cut from the timber aforesaid. The Railroad agrees to permit the Cypress Company, at the sole cost and expense of the Cypress Company, to equip One Hundred (100) of the Railroad's flat cars with permanent stanchions of a type to insure safe handling of the logs. The cost and expense of installing and maintaining the permanent stanchions on the cars to be borne by the Cypress Company, and it is understood and agreed that the said cars are not to be considered as permanently assigned to use by the Cypress Company but that in time of car shortage the Railroad will furnish to the Cypress Company such proportion of said One Hundred (100) cars as is in accordance with the laws and rules and regulations governing during time of such car shortage. The Cypress Company assumes all risk of damage to the said stanchions by falling off, loss or otherwise, and will, at its sole cost and

expense make such repairs and—or renewals to the said stanchions as may be necessary in order that the same may be safe for service. The Railroad shall in no event be obligated hereunder to furnish cars in excess of the One Hundred (100) cars herein provided for.

[fol. 392] Third. The Railroad agrees that when cars shall have been placed by it on the said sidetrack near Otter Creek, the Cypress Company shall have the right to move such cars under its own power and in charge of its own crews over the spur track hereinbefore referred to, into the woods and logging camp of the Cypress Company for the purpose of loading same, provided the Cypress Company constructs and thereafter maintains the said spur track in condition satisfactory to the proper officer of the Railroad. The Cypress Company will, as soon as practicable, load the cars at its sole cost and expense, furnishing all necessary stanchions and other appliances for the purpose of properly securing the loads on the cars, and when so loaded will promptly return the said cars under its own power and in charge of its own crews and deliver same to the Railroad in trains of not less than thirty (30) cars every other day, Sundays and Holidays excluded, by placing the said cars on the sidetrack near Otter Creek, above referred to. Upon return of said cars loaded with logs as aforesaid, the Railroad agrees that it will accept delivery of the train made up thereof on the sidetrack aforesaid and will move the same in trains of a minimum of thirty (30) cars from the said sidetrack over its line to Lacoochee, Florida, and will there deliver the cars on the sidetrack of the Cypress Company. Such movement shall be at the rate of not less than thirty (30) cars every other day, Sundays and Holidays excluded. Upon arrival of the cars at Lacoochee, Florida, the Cypress Company will promptly, at its sole cost and expense, unload the logs from the cars and re-deliver to the Railroad the empty cars at soon as practicable after same are delivered by the Railroad at Lacoochee.

Fourth. It is mutually understood and agreed that the prompt loading and return by the Cypress Company of the cars to be furnished by the Railroad for the woods camp, where the timber will be cut, and also prompt unloading and re-delivering by it of the cars at Lacoochee are both

of the essence of this contract and that such prompt handling is necessary in order to carry out the schedule movement herein provided for.

Fifth. In the event any train crew shall be furnished hereunder by the Railroad, whether in pursuance to the schedule herein provided for, or at the call of the Cypress Company, and such crew shall not, for a reason for which the Cypress Company is responsible, be used, then the Cypress Company will promptly on demand reimburse the Railroad for the amount paid such crew not used.

Sixth. The Cypress Company agrees to and does hereby assume full responsibility for the care and condition of the cars of the Railroad while the said cars are in the possession of the Cypress Company at Otter Creek or at Lacoochee, and in the event damage shall occur to said cars while in the possession of the Cypress Company, adjustments in relation thereto shall be subject to the rules of the American Railway Association, Division V—Mechanical, covering interchange of cars between railroads. The Cypress Company will promptly report to the Railroad the destruction of any car while in the possession of the Cypress Company, demurrage charges to cease upon receipt of such notice by the Railroad. Should the Cypress Company fail to report loss of any such car then the demurrage tariffs will continue and remain in force and effect in the same manner as if the car were in good condition for use and operation.

Seventh. The Cypress Company agrees to pay promptly to the Railroad at the rates provided for in current tariffs, all freight and demurrage charges due for the movement of said logs or for the detention of cars for a period greater than that permitted in the proper and lawful tariffs of the Railroad governing same.

Eighth. Cars shall be deemed delivered to the Cypress Company when placed on the designated tracks at Otter Creek or Lacoochee and detached from the engine by which they were moved. Cars shall be deemed delivered to the Railroad when placed in trains by the Cypress Company on [fol. 393] such tracks and attached or coupled to the engine or engines by which they are to be moved to destination, or when proper bill of lading has been issued therefor.

Ninth. The Cypress Company agrees to furnish to the Railroad a good and sufficient bond with a corporate surety to be approved by the Railroad, in the penal sum of Ten Thousand Dollars ($10,000.00), conditioned for the faithful performance by the Cypress Company of all of the obligations and agreements herein contained to be kept and performed by the Cypress Company, and so as to indemnify the Railroad against loss, cost and damage by reason of any act of malfeasance or negligence on the part of the Cypress Company or its employees in connection with handling of the cars after delivery of the same to the Cypress Company, and at all times while the said cars are in the care and under the control of the Cypress Company.

Tenth. If at any time during the continuance of this agreement, the mill of the Cypress Company at Lacoochee, Florida, shall be damaged or destroyed by fire, or otherwise, or if any accident shall happen to the machinery of the same so that the Cypress Company shall be forced to shut down same for repairs, or in the event of a strike on the part of the employees of the Railroad, or in the event that either the Railroad or the Cypress Company for any unavoidable cause, shall be temporarily prevented from performing its part of this agreement the said party may give reasonable notice to the other party, requiring as of right the temporary suspension of the performance of this agreement for a definite and reasonable period to be named in said notice, and thereupon the performance of this agreement shall be temporarily suspended for the period named in the notice.

Eleventh. The Cypress Company agrees that it will, so far as it lawfully may, cause all rail shipments of lumber manufactured by the Cypress Company from the cypress standing timber aforesaid consigned by the Cypress Company to points reached by lines of the Railroad or its connecting lines or roads, to be routed over the lines of the Railroad and its connections unless the charges for such shipments over the lines of the Railroad and its connections are higher than the lawfully published rates for like transportation of similar shipments over the lines of other transportation companies.

Twelfth. This agreement shall become effective on the 19th day of June, A. D. 1926, and shall thereafter continue in force and effect until terminated by either party hereto, by giving to the other party thirty (30) days' notice in writing of the intention to terminate this agreement.

In witness whereof, the parties hereto have caused these presents to be duly executed the day and year first above written.

Atlantic Coast Line Railroad Company, by Lyman Delano, Executive Vice-President. Attest: Geo. L. Mitchell, Asst. Secretary. (Seal.) Witnesses: E. T. Hinnant, W. M. Hinnant. Cummer Cypress Company, by A. G. Cummer, President. Attest: W. G. Cummer, Secretary. (Seal.) Witnesses: C. H. Lloyd, E. B. Chapman.

[fol. 394] Approved D. M. Lamdin, Engineer Maintenance of Way.

Approved: C. H. Sewell, Jr., Superintendent. T. L. Deming, Supt. Jnx. Dist.

Approved: O. H. Page, General Superintendent.

Approved: —— ——, General Superintendent Transp.

Approved as to form: Carl H. Davis, Counsel.

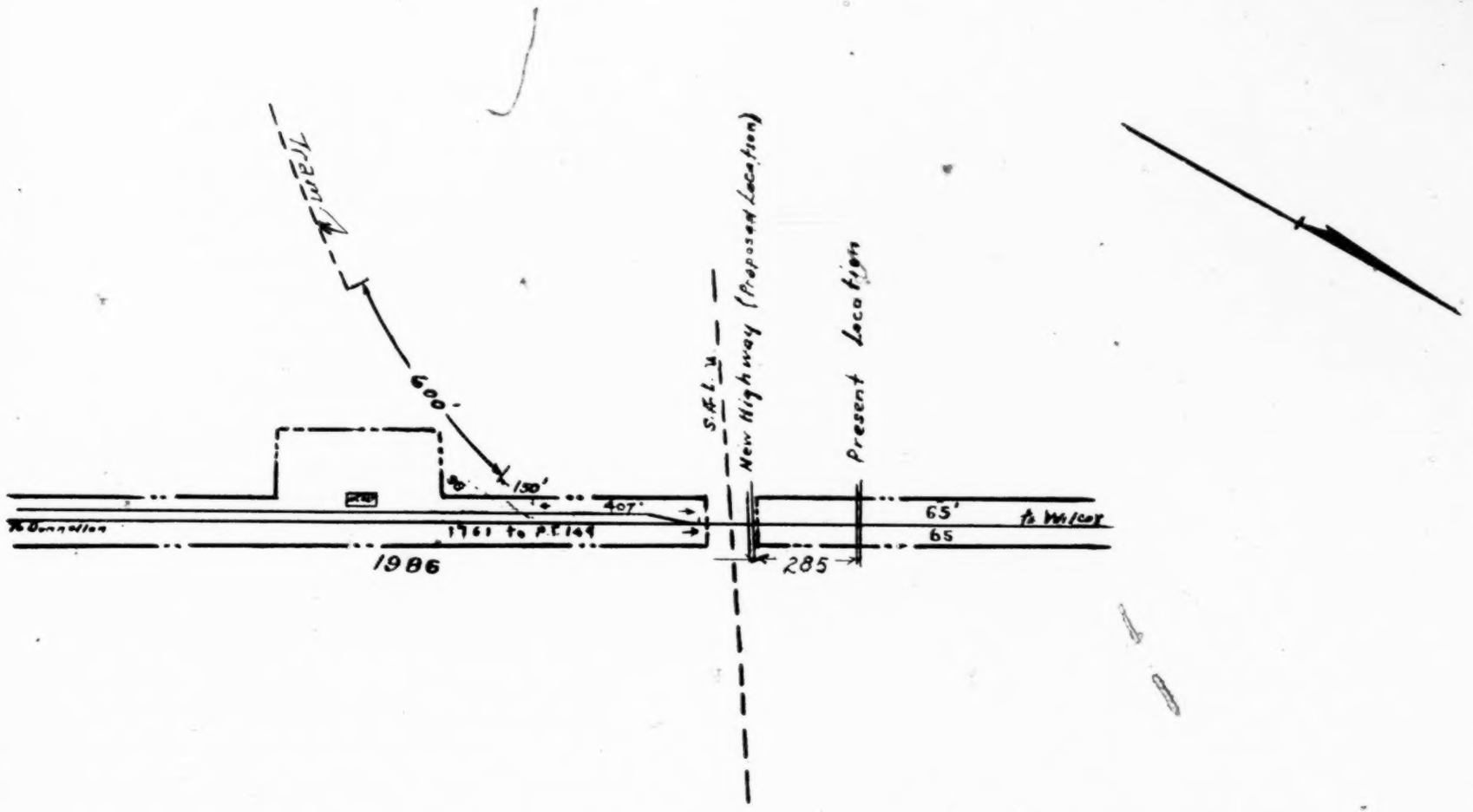
Approved: J. N. Briand, Assistant General Manager.

[fol. 395] Know all men by these presents, that the Cummer Cypress Company, a corporation created and existing under the laws of the State of Florida, as Principal, and The Fidelity and Casualty Co. of New York, as Surety, are held and firmly bound unto the Atlantic Coast Line Railroad Company in the full and just sum of Ten Thousand ($10,000.00) Dollars lawful money of the United States, to the payment whereof well and truly to be made we hereby bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals, this 10th day of May, A. D. 1926.

The condition of the above obligation is such that

Whereas, the Cummer Cypress Company has entered into an agreement with the Atlantic Coast Line Railroad



ATLANTIC COAST LINE R. R. CO.

OTTER CREEK - FLA

SCALE 1-400 R.E.804 10-24-22

OFFICE OF ENGINEER, MAINTENANCE OF WAY
JACKSONVILLE, FLA.

Change in location Road Crossing
D.E Thomas
11-23-28

2-28 23

8646-33

Company, dated the 20th day of March, A. D. 1926 with reference to the movement of logs from Otter Creek in Levy County, Florida, over the line of the Atlantic Coast Line Railroad Company; and

Whereas by the ninth paragraph of said agreement the Principal has agreed to furnish to the said Railroad Company a good and sufficient bond in the penalty of Ten Thousand ($10,000.00) Dollars, conditioned for the faithful performance of the Principal of all of the obligations of the agreement and to indemnify the said Railroad Company as in said agreement set out:

Now, therefore, if the said Principal shall well and truly perform all of the obligations in said Agreement contained, to be performed by the Principal, and shall indemnify and save harmless the said Railroad Company as in said agreement set out, then this obligation shall be void, otherwise to remain in full force and virtue.

Cummer Cypress Company, by A. G. Cummer, President. Attest: W. E. Cummer, Secretary. (Seal.)
The Fidelity and Casualty Company of New York, by Max N. Kurde, Attorney. Attest: —— ——. (Seal.)

(Here follows map, side folio 396)

[fol. 397] EXHIBIT 29

Data Pertinent to Complaint of Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company Before the Interstate Commerce Commission

I. C. C. Docket No. 18364

[fol. 398] Statement of Uncut Timber of Cummer Interests Available to Plant at Lacoochee, Florida, as of Oct. 1, 1926, in the County of Levy

Township	Range	Cypress	Pine	Hardwood
12-13-14	15 & 16	18,000 M′	5,000 M′	.....
		Citrus County		
19-20	17	19,500 M′	1,503 M′	8,295 M′
		Hernando—Citrus—Sumter		
17 to 21	20-21-22	74,860 M′	.....	.....
		112,360 M′	6,503 M′	8,295 M′

When logged the above timber (127,158 M') is equivalent to approximately 28,257 car loads of logs. At the present prevailing average per car $300,060.30 will be paid in log freight to move the timber to the mill.

[fol. 399] Memorandum of Property Investment of Cummer Cypress Company at Lacoochee, Florida, June 30, 1926

Lacoochee Mill Site	16,252 74
Lacoochee Saw Mill Construction	126,703 81
Lacoochee Saw Mill Equipment	125,973 03
Lacoochee New Pine Saw Mill Construction	2,796 90
Lacoochee New Pine Saw Mill Equipment	2,390 52
Lacoochee Planing Mill Equipment	33,818 76
Lacoochee Boom Equipment	8,875 30
Lacoochee Sort Shed	2,117 22
Lacoochee Lumber Dry Kiln Construction	17,127 31
Lacoochee Lumber Dry Kiln Equipment	1,825 92
Lacoochee Burner Construction	10,820 85
Lacoochee Yard Construction	96,922 94
Lacoochee Yard Equipment	23,651 70
Lacoochee Mill Spurs	20,187 41
Lacoochee Fire Protection Account	47,269 57
Lacoochee Box Factory Construction	43,869 55
Lacoochee Box Factory Equipment	52,379 53
Lacoochee Veneer Plant Construction	28,605 75
Lacoochee Veneer Plant Equipment	19,954 26
Lacoochee Box Factory Warehouse	36,662 00
Lacoochee Veneer Dry Kiln Construction	18,322 62
Lacoochee Veneer Dry Kiln Equipment	1,085 85
Lacoochee Steam Vat Construction	2,906 74
Lacoochee Steam Plant Construction	52,582 73
Lacoochee Steam Plant Equipment	119,032 73
Lacoochee Cooling Pond	4,934 17
Lacoochee Dust House Construction	8,977 90
Lacoochee Oil House	220 13
Lacoochee Machine Shop Construction	5,090 74
Lacoochee Machine Shop Equipment	13,277 43
Lacoochee Office Building	1,838 07
Lacoochee Office Fixtures	1,680 03
Lacoochee Stable Construction	352 76
Lacoochee Tenement Houses	206,268 29

Lacoochee Bungalow Construction	2,036.52
Lacoochee Bungalow Equipment	1,324.97
Lacoochee Boarding House Construction	8,808.01
Lacoochee Boarding House Equipment	5,382.57
Lacoochee Commissary Building	4,219.80
Lacoochee Commissary Ice House Construction	805.74
Lacoochee Commissary Fixtures	3,358.14
Lacoochee Drug Store	449.89
Lacoochee Auto Account	7,238.99
Lacoochee Team & Wagon Account	1,657.74
Lacoochee Live Stock	5,476.95
	1,195,534.58

[fol. 400] Statement of Weekly Pay Roll and Number of Employees, Plant of Cummer Cypress Company, Lacoochee, Fla.

Pay Roll September 23rd, to Sept. 29th, 1926 Inc.	11,992 65
Number of Employees	617

[fol. 401] Statement of Houses Built by Cummer Cypress Company and Number of Inmates at Lacoochee, Florida

Colored	127 Houses	410 Inmates
White	77 Houses	484 Inmates
	204 Houses	894 Inmates

[fol. 402] EXHIBIT 30

BEFORE THE INTERSTATE COMMERCE COMMISSION

I .C. C. Docket No. 18364

Data Pertinent to Complaint of

GEORGIA PUBLIC SERVICE COMMISSION

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

[fol. 403] Logs Hauled on J. & S. W. and A. C. L. R. R. from Various Points in Florida to Milldale, Florida

Date	No. cars	Freight
Sept. 1899	150	900.00
Oct. 1899	567	3,402.00

EXHIBIT No. 30—Continued

Date	No. cars	Freight
Nov. 1899	642	3,852.00
Dec. 1899	604	3,624.00
	1,963	11,778.00
Jan. 1900	758	4,548.00
Feb. 1900	699	4,194.00
Mar. 1900	500	3,047.00
Apr. 1900	723	5,035.00
May 1900	824	5,719.00
June 1900	675	4,728.00
July 1900	686	4,804.00
Aug. 1900	776	5,379.00
Sept. 1900	825	5,646.00
Oct. 1900	757	5,299.00
Nov. 1900	637	4,459.00
Dec. 1900	477	3,339.00
	8,337	56,197.00
Jan. 1901	645	4,515.00
Feb. 1901	560	3,920.00
Mar. 1901	633	4,431.00
Apr. 1901	639	4,473.00
May 1901	595	4,165.00
June 1901	549	3,843.00
July 1901	633	4,431.00
Aug. 1901	371	2,579.00
Sept. 1901	464	3,248.00
Oct. 1901	568	3,976.00
Nov. 1901	600	4,200.00
Dec. 1901	567	3,969.00
	6,824	47,768.00
Jan. 1902	621	4,347.00
Feb. 1902	659	4,609.00
Mar. 1902	627	4,393.00
Apr. 1902	642	4,494.00
May 1902	610	4,270.00

EXHIBIT No. 30—Continued

June 1902	535	4,244.00
July 1902	683	5,448.00
Aug. 1902	814	6,397.00
Sept. 1902	828	6,539.00
Oct. 1902	877	6,884.00
Nov. 1902	783	6,159.00
Dec. 1902	553	4,365.00
	8,232	62,149.00
Jan. 1903	603	4,759.00
Feb. 1903	698	5,416.00
Mar. 1903	740	5,771.00
Apr. 1903	803	6,222.00
May 1903	699	5,453.00
June 1903	708	5,527.00
July 1903	733	5,606.00
Aug. 1903	887	6,808.00
Sept. 1903	791	6,086.00
Oct. 1903	875	6,698.00
Nov. 1903	824	6,448.00
Dec. 1903	827	6,186.00
	9,188	70,980.00

[fol. 404]

Jan. 1904	934	6,954.00
Feb. 1904	929	6,958.00
Mar. 1904	908	6,832.00
Apr. 1904	907	6,978.00
May 1904	907	7,022.00
June 1904	912	7,006.00
July 1904	732	5,568.00
Aug. 1904	911	6,910.00
Sept. 1904	877	6,660.00
Oct. 1904	724	5,494.00
Nov. 1904	755	5,678.00
Dec. 1904	786	5,896.00
	10,282	77,956.00

EXHIBIT No. 30—Continued

Date	No. cars	Freight
Jan. 1905	651	4,878.00
Feb. 1905	651	4,916.00
Mar. 1905	754	5,710.00
Apr. 1905	662	4,822.00
May 1905	774	5,760.00
June 1905	791	5,818.00
July 1905	736	5,664.00
Aug. 1905	717	5,458.00
Sept. 1905	569	4,302.00
Oct. 1905	742	5,652.00
Nov. 1905	704	5,340.00
Dec. 1905	743	5,686.00
	8,494	64,006.00
Jan. 1906	748	5,670.00
Feb. 1906	639	4,800.00
Mar. 1906	867	6,378.00
Apr. 1906	780	5,880.00
May 1906	764	5,924.00
June 1906	865	6,920.00
July 1906	688	5,504.00
Aug. 1906	812	6,496.00
Sept. 1906	628	5,024.00
Oct. 1906	672	5,376.00
Nov. 1906	666	5,328.00
Dec. 1906	423	3,384.00
	8,552	66,684.00
Jan. 1907	654	5,232.00
Feb. 1907	578	4,624.00
Mar. 1907	434	3,472.00
Apr. 1907	378	3,024.00
May 1907	537	4,296.00
June 1907	402	3,216.00
July 1907	521	4,168.00
Aug. 1907	404	4,032.00
Sept. 1907	449	3,592.00

EXHIBIT No. 30—Continued

Date	No. cars	Freight
Oct. 1907	427	3,416.00
Nov. 1907	459	3,672.00
Dec. 1907	471	3,768.00
	5,814	46,512.00
[fol. 405]		
Jan. 1908	406	3,248.00
Feb. 1908	451	3,608.00
Mar. 1908	499	3,992.00
Apr. 1908	440	3,522.58
May 1908	500	4,000.54
June 1908	578	4,625.04
July 1908	561	4,514.51
Aug. 1908	548	4,480.66
Sept. 1908	514	4,220.22
Oct. 1908	577	4,797.27
Nov. 1908	377	3,068.91
Dec. 1908	397	3,229.73
	5,848	47,307.46
Jan. 1909	570	4,692.14
Feb. 1909	499	4,081.67
Mar. 1909	482	3,888.20
Apr. 1909	571	4,604.80
May 1909	431	3,463.66
June 1909	644	5,111.91
July 1909	644	4,933.62
Aug. 1909	689	5,258.26
Sept. 1909	721	5,494.67
Oct. 1909	709	5,313.46
Nov. 1909	624	4,724.93
Dec. 1909	576	4,432.16
	7,160	55,999.48
Jan. 1910	718	5,617.19
Feb. 1910	597	4,827.08

EXHIBIT No. 30—Continued

Date	No. cars	Freight
Mar. 1910	868	6,633.21
Apr. 1910	850	6,500.22
May 1910	810	6,127.52
June 1910	770	5,774.92
July 1910	638	4,832.11
Aug. 1910	534	4,271.82
Sept. 1910	467	3,792.54
Oct. 1910	394	3,192.88
Nov. 1910	583	5,572.24
Dec. 1910	635	6,080.19
	7,861	63,221.92
Jan. 1911	506	4,602.06
Feb. 1911	301	2,953.62
Mar. 1911	313	3,032.06
Apr. 1911	304	2,785.14
May 1911	404	3,852.36
June 1911	376	3,756.42
July 1911	356	3,571.74
Aug. 1911	354	3,433.88
Sept. 1911	301	2,904.64
Oct. 1911	362	3,402.54
Nov. 1911	390	3,620.70
Dec. 1911	414	3,932.12
	4,381	41,847.28

[fol. 406]

Jan. 1912	443	4,061.88
Feb. 1912	529	4,851.18
Mar. 1912	429	3,965.22
Apr. 1912	450	4,154.22
May 1912	711	6,458.47
June 1912	535	4,853.71
July 1912	708	6,453.64
Aug. 1912	652	6,083.24
Sept. 1912	510	4,603.65
Oct. 1912	670	6,070.99

EXHIBIT No. 30—Continued

Date	No. cars	Freight
Nov. 1912	714	6,492.58
Dec. 1912	581	5,310.62
	6,932	63,359.40
Jan. 1913	683	6,416.81
Feb. 1913	501	4,717.86
Mar. 1913	553	5,201.38
Apr. 1913	577	3,310.39
May 1913	672	6,140.49
June 1913	670	6,092.49
July 1913	641	5,828.87
Aug. 1913	581	5,262.41
Sept. 1913	562	5,101.74
Oct. 1913	369	3,363.68
Nov. 1913	345	3,159.80
Dec. 1913	346	3,150.06
	6,500	59,745.98
Jan. 1914	411	3,752.40
Feb. 1914	364	3,373.89
Mar. 1914	316	2,876.82
Apr. 1914	365	3,295.53
May 1914	407	3,680.43
June 1914	443	3,991.03
July 1914	480	4,320.00
Aug. 1914	425	3,825.00
Sept. 1914	452	4,068.00
Oct. 1914	384	3,456.00
Nov. 1914		
Dec. 1914		
	4,047	36,639.10
Jan. 1915		
Feb. 1915		
Mar. 1915	240	2,251.89
Apr. 1915	450	4,094.92

EXHIBIT No. 30—Continued

Date	No. cars	Freight
May 1915	516	4,637.11
June 1915	440	3,963.80
July 1915	426	3,836.44
Aug. 1915	467	4,229.63
Sept. 1915	434	3,916.96
Oct. 1915	423	3,810.72
Nov. 1915	418	3,767.69
Dec. 1915	486	4,382.94
	4,300	38,892.10
Jan. 1916	423	3,813.95
Feb. 1916	455	4,095.80
Mar. 1916	489	4,401.61
Apr. 1916	449	4,047.69
May 1916	464	3,783.35
June 1916	416	3,744.13
	2,696	23,886.53

[fol. 407] Recapitulation, by Years, of Logs Hauled on J. & S. W. and A. C. L. R. R. from Various Points in Florida to Milldale, Florida

Year	No. months	No. cars	Freight
1899	3½	1,913	11,778.00
1900	12	8,337	56,197.00
1901	12	6,824	47,768.00
1902	12	8,232	62,149.00
1903	12	9,188	70,980.00
1904	12	10,282	77,956.00
1905	12	8,494	64,006.00
1906	12	8,552	66,684.00
1907	12	5,814	46,512.00
1908	12	5,848	47,307.46
1909	12	7,160	55,999.48
1910	12	7,861	63,221.92
1911	12	4,381	41,847.28

EXHIBIT No. 30—Continued

Date		No. cars	Freight
1912	12	6,932	63,359.40
1913	12	6,500	59,745.98
1914	10	4,047	36,639.10
1915	10	4,300	38,892.10
1916	6	2,696	23,886.53
		117,411	934,929.25

[fol. 408] Statement of Cost of Cummer Lumber Company Plant at Jacksonville, Florida

Saw Mill Plant	314,369.10
Steam Plant	60,450.65
Box Factory	221,899.29
Yard Equipment	48,910.82
Dry Kilns	22,089.88
Docks	35,149.67
Storage Sheds	28,119.23
Fire Protection	48,373.33
Water Supply	10,717.53
Lighting Plant	2,301.65
Tenement Houses	35,178.51
Fixtures	14,578.03
Automobiles & Trucks	6,869.06
Teams & Wagons	4,913.24
Mill Site	396,801.12
	1,250,721.11

[fol. 409] EXHIBIT 31

This agreement, made and entered into, in duplicate, this 22nd day of March, A. D. 1926, by and between the Atlantic Coast Line Railroad Company, a corporation under the laws of the State of Virginia, hereinafter called the Railroad, party of the first part, and the Wilson Cypress Company, a corporation organized and existing under the laws of the State of Florida, hereinafter called the Cypress Company, party of the second part.

Witnesseth: That

Whereas the Cypress Company owns approximately Two Hundred Million feet of cypress standing timber in Dixie, Taylor and Lafayette Counties, Florida, near Hines, on the line of the Atlantic Coast Line Railroad Company between Wilcox and Perry, in said State, which said timber the Cypress Company proposes to cut into logs and thereafter cause the same to be transported in train load lots to Palatka, Florida, at which point the said logs will be manufactured into lumber, and in connection with the transportation of said logs desires the Railroad to transport same from two sidetracks hereinafter mentioned, constructed near Hines, over the lines of the Railroad known as the Perry Branch and the Florida Southern Branch, to a certain track already constructed by the Cypress Company at Palatka, Florida, at which point the logs are to be delivered to the Cypress Company for unloading; and,

Whereas the Cypress Company has built, or proposes to build a spur track leading from the said sidetracks already constructed near Hines into the woods and into the logging camps of the Cypress Company, and desires the right to connect said spur track to the said sidetracks near Hines, so that cars from the Railroad may be carried by the Cypress Company into the woods for loading and thereafter returned and delivered to the Railroad on the sidetracks at Hines.

Now, therefore, for and in consideration of the premises and agreements hereinafter contained, to be mutually kept and performed, and in further consideration of the sum of One Dollar ($1.00) by each of the parties to the other paid, the parties hereto have mutually covenanted and agreed as follows:

First. The two tracks at Hines, Florida, on which cars are to be delivered to and received from the Cypress Company hereunder, are constructed or to be constructed and thereafter maintained in accordance with contract dated March 22nd, 1926, between the parties hereto, as shown in red on blueprint attached hereto as a part hereof.

Second. The Railroad will furnish to the Cypress Company on the said sidetracks, flat cars to be loaded by the Cypress Company with logs cut from the timber aforesaid. The Railroad agrees to permit the Cypress Company, at

the sole cost and expense of the Cypress Company, to equip seventy (70) of the Railroad's flat cars with permanent stanchions of the type known as "Improved Van Donk" stakes or stake pockets, and also twenty-five (25) of the Railroad's flat cars with stanchions of the type known as "Phœnix Pocket" stakes of stake pockets. The cost and expense of installing and maintaining the permanent stanchions on the cars to be borne by the Cypress Company, and it is understood and agreed that the said cars are not to be considered as permanently assigned to use by the Cypress Company, but that in time of car shortage the Railroad will furnish to the Cypress Company such proportion of said ninety-five (95) cars as is in accordance with the law and rules and regulations governing during time of such car shortage. The Cypress Company assumes all risk of damage to the said stanchions by falling off, loss or otherwise, and will, at its sole cost and expense make such repairs and —or renewals to the said stanchions as may be necessary in order that the same may be safe for service. The Railroad shall in no event be obligated hereunder to furnish cars in excess of the ninety-five (95) cars herein provided for.

[fol. 410] Third. The Railroad agrees that when cars shall have been placed by it on the said sidetracks near Hines, the Cypress Company shall have the right to move such cars under its own power and in charge of its own crews over the spur track hereinbefore referred to, into the woods and logging camp of the Cypress Company for the purpose of loading same, provided the Cypress Company constructs and thereafter maintains the said spur track in condition satisfactory to the proper officer of the Railroad. The Cypress Company, will, as soon as practicable, load the cars at its sole cost and expense, furnishing all necessary stanchions and other appliances for the purpose of properly securing the loads on the cars, and when so loaded will promptly return the said cars under its own power and in charge of its own crews and deliver same to the Railroad in trains of not less than thirty (30) cars every other day, Sundays and Holidays excluded, by placing the said cars on one of the sidetracks near Hines, above referred to. Upon return of said cars loaded with logs as aforesaid, the Rail-

road agrees that it will accept delivery of the train made up thereof on the sidetracks aforesaid and will move the same in trains of a minimum of thirty (30) cars from the said sidetracks over its line to Palatka, Florida, and will there deliver the cars on the sidetrack of the Cypress Company. Such movement shall be at the rate of not less than thirty (30) cars every other day, Sundays and Holidays excluded. Upon arrival of the cars at Palatka, Florida, the Cypress Company will promptly, at its sole cost and expense, unload the logs from the cars and re-deliver to the Railroad the empty cars as soon as practicable after same are delivered by the Railroad at Palatka.

Fourth. It is mutually understood and agreed that the prompt loading and return by the Cypress Company of the cars to be furnished by the Railroad for the woods camp, where the timber will be cut, and also prompt unloading and re-delivering by it of the cars at Palatka, are both of the essence of this contract and that such prompt handling is necessary in order to carry out the schedule movement herein provided for.

Fifth. In the event any train crew shall be furnished hereunder by the Railroad, whether in pursuance to the schedule herein provided for, or at the call of the Cypress Company, and such crew shall not, for a reason for which the Cypress Company is responsible, be used, then the Cypress Company will promptly on demand reimburse the Railroad for the amount paid such crew not used.

Sixth. The Cypress Company agrees to and does hereby assume full responsibility for the care and condition of the cars of the Railroad while the said cars are in the possession of the Cypress Company at Hines or at Palatka, and in the event damage shall occur to said cars while in the possession of the Cypress Company, adjustments in relation thereto shall be subject to the rules of the American Railway Association, Division V—Mechanical, covering interchange of cars between railroads. The Cypress Company will promptly report to the Railroad the destruction of any car while in the possession of the Cypress Company, demurrage charges to cease upon receipt of such notice by the Railroad. Should the Cypress Company fail to report

loss of any such car then the demurrage tariffs will continue and remain in force and effect in the same manner as if the car were in good condition for use and operation.

Seventh. The Cypress Company agrees to pay promptly to the Railroad at the rates provided for in current tariffs, all freight and demurrage charges due for the movement of said logs or for the detention of cars for a period greater than that permitted in the proper and lawful tariffs of the Railroad governing same.

Eighth. Cars shall be deemed delivered to the Cypress Company when placed on the designated tracks at Hines or Palatka and detached from the engine by which they were moved. Cars shall be deemed delivered to the Railroad when placed in trains by the Cypress Company on such [fol. 411] tracks and attached or coupled to the engine or engines by which they are to be moved to destination, or when proper bill of lading has been issued therefor.

Ninth. The Cypress Company agrees to furnish to the Railroad a good and sufficient bond with a corporate surety to be approved by the Railroad, in the penal sum of Ten Thousand Dollars ($10,000.00) conditioned for the faithful performance by the Cypress Company of all of the obligations and agreements herein contained to be kept and performed by the Cypress Company, and so as to indemnify the Railroad against loss, cost and damage by reason of any act of malfeasance or negligence on the part of the Cypress Company or its employees in connection with handling of the cars after delivery of the same to the Cypress Company, and at all times while the said cars are in the care and under the control of the Cypress Company.

Tenth. If at any time during the continuance of this agreement, the mill of the Cypress Company at Palatka, Florida, shall be damaged or destroyed by fire, or otherwise, or if any accident shall happen to the machinery of the same so that the Lumber Company shall be forced to shut down same for repairs, or in the event of a strike on the part of the employees of the Railroad, or in the event that either the Railroad or the Cypress Company for any unavoidable cause, shall be temporarily prevented from performing its part of this agreement the said party may give reasonable notice to the other party, requiring as of right the temporary suspension of the performance of this

agreement for a definite and reasonable period to be named in said notice; and thereupon the performance of this agreement shall be temporarily suspended for the period named in the notice.

Eleventh. The Cypress Company agrees that it will, so far as it lawfully may, cause all rail shipments of lumber manufactured by the Cypress Company from the cypress standing timber aforesaid consigned by the Cypress Company to points reached by lines of the Railroad or its connecting lines or roads, to be routed over the lines of the Railroad and its connections unless the charges for such shipments over the lines of the Railroad and its connections are higher than the lawfully published rates for like transportation of similar shipments over the lines of other transportation companies.

Twelfth. This agreement shall become effective on the 13th day of July A. D. 1926, and shall thereafter continue in force and effect until terminated by either party hereto, by giving to the other party thirty (30) days' notice in writing of the intention to terminate this agreement.

This agreement cancels and supersedes agreement dated November 20th, 1924, between the parties hereto, covering special log train service between Old Town and Palatka, Florida.

In witness whereof, the parties hereto have caused these presents to be duly executed the day and year first above written.

Atlantic Coast Line Railroad Company, by Lyman Delano, President. Attest, Geo. L. Mitchell, Asst. Secretary. (Seal.) Wilson Cypress Company, by John G. MacPherson, President. Attest. A. A. Cann, Secretary. (Seal.)

Witnesses: E. T. Hinnant, L. C. Allen.

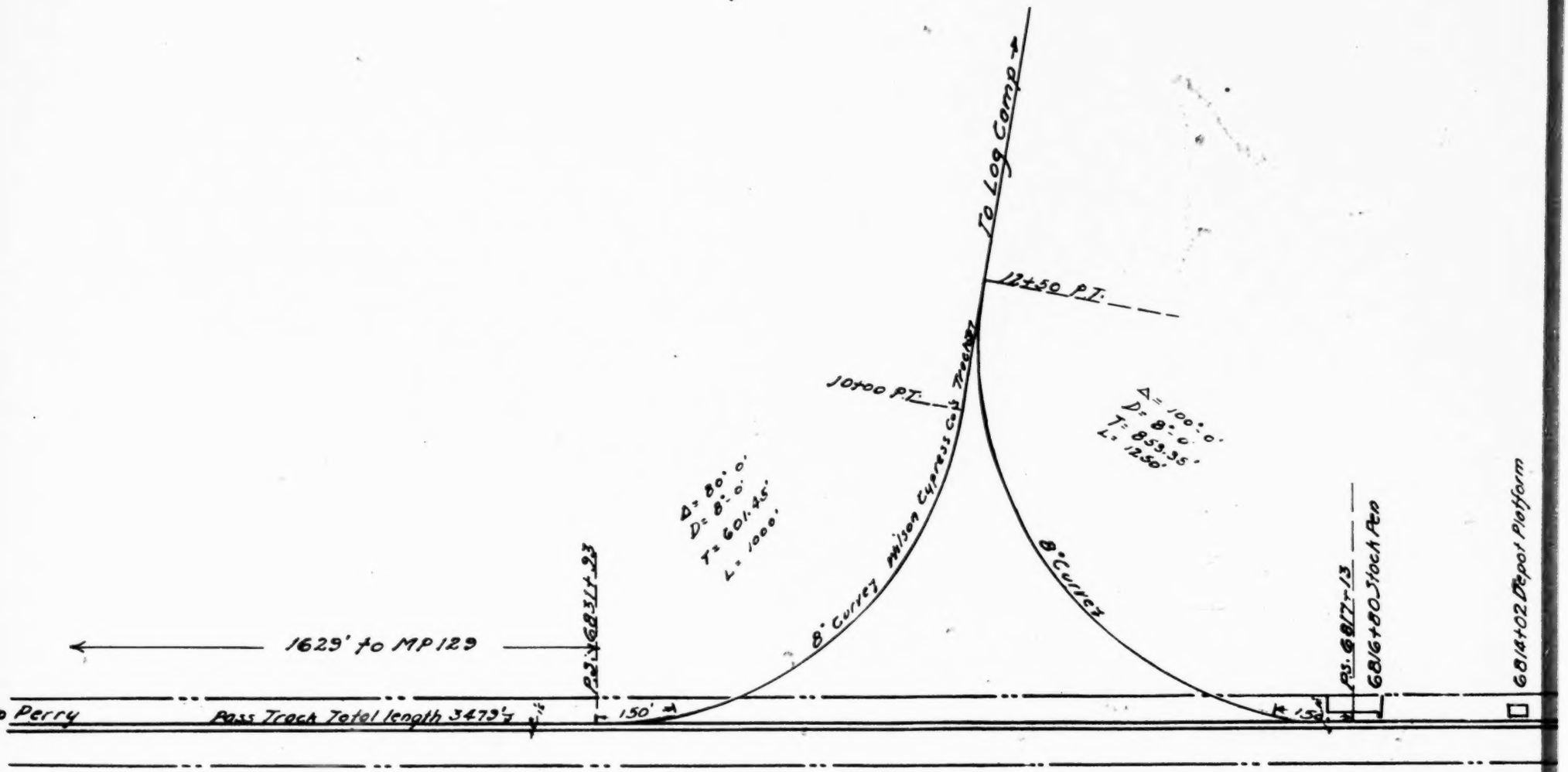
Witnesses: R. K. Bachelder, K. O. Reynolds.

[fol. 412] Approved: D. M. Lamden, Engineer Maintenance of Way.

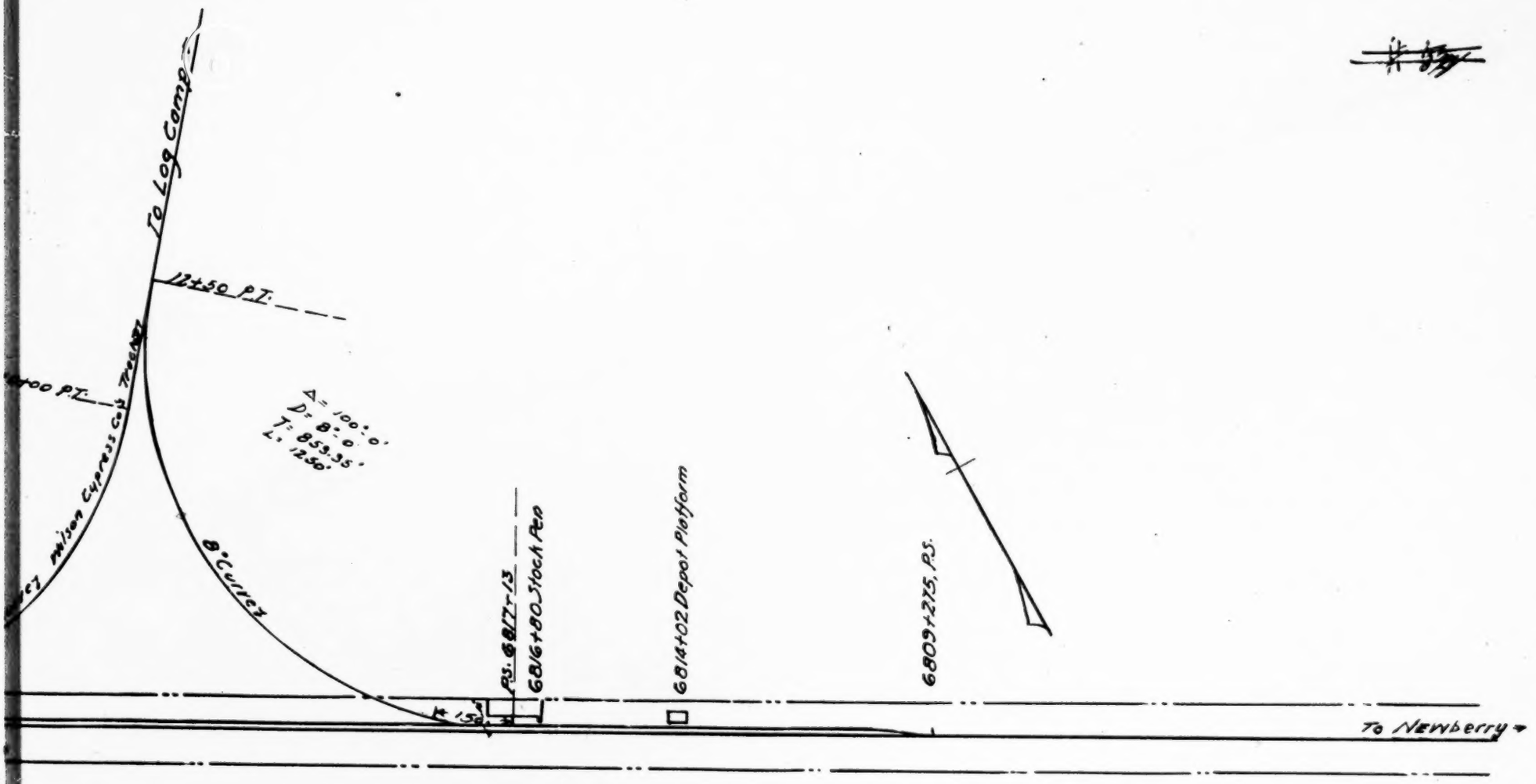
Approved: F. B. Langley, Superintendent.

Approved: —— ——, General Superintendent Transportation.

Approved: O. H. Puze, General Superintendent.



To Log Camp
12+50 P.T.
10+00 P.T.
Δ = 100°-0'
D = 8°-0'
T = 853.35'
L = 1250'
Δ = 80°-0'
D = 8°-0'
T = 601.45'
L = 1000'
8° Curve
8° Curve
1629' to MP 129
P.S. 6831+93
P.S. 6817+13
6816+80 Stock Pen
6814+02 Depot Platform
To Perry
Pass Track Total length 3479'
150'
150'



A.C.L.R.R.CO 414

PRO. LOCATION OF WILSON CYPRESS COMPANY'S TRACKS NEAR HINIS FLA

SCALE 1"=200 FT. JAN. 12, 1926

OFFICE OF E. M. OF W. JACKSONVILLE, FLA

9977-69

Approved: —— ——, General Supt. Motive Power.

Approved as to form: Geo. W. Davis, counsel.

Approved: J. N. Brand, Assistant General Manager.

Know all men by these presents, that the Wilson Cypress [fol. 413] Company, a corporation created and existing under the laws of the State of Florida, as Principal, and Standard Accident Insurance Company, Detroit, Michigan, a Corporation, as Surety, are held and firmly bound unto the Atlantic Coast Line Railroad Company in the full and just sum of Ten Thousand Dollars ($10,000.00) lawful money of the United States, to the payment whereof well and truly to be made we hereby bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals, this 22nd day of March, A. D. 1926.

The condition of the above obligation is such that

Whereas, the Wilson Cypress Company has entered into an agreement with the Atlantic Coast Line Railroad Company, dated the 22nd day of March, A. D. 1926, with reference to the movement of logs from Hines in Dixie County, Florida, over the line of the Atlantic Coast Line Railroad Company; and

Whereas by the ninth paragraph of said agreement the Principal has agreed to furnish to the said Railroad Company a good and sufficient bond in the penalty of Ten Thousand Dollars, ($10,000.00), conditioned for the faithful performance of the Principal of all of the obligations of the agreement and to indemnify the said Railroad Company as in said agreement set out:

Now, therefore, if the said Principal shall well and truly perform all of the Obligations in said Agreement contained, to be performed by the Principal, and shall indemnify and save harmless the said Railroad Company as in said agreement set out, then this obligation shall be void, otherwise to remain in full force and virtue.

Wilson Cypress Company, by John G. MacPherson, President. Attest: A. A. Corman, Secretary. (Seal.) Standard Accident Insurance Company, by R. B. Shields, Attorney-in-fact. Attest: I. B. Waters, Attorney-in-fact. (Seal.)

(Here follows map, side folio 414)

[fol. 415] EXHIBIT 32

I. C. C. Docket 18364

Witness: F. H. Wilson

Wilson Cypress Company, Palatka, Florida, October 19, 1926

Total Capital Assets Wilson Cypress Company, per January 31, 1926, Balance Sheet

Machinery & Equipment	$380,376.16
Buildings	308,638.04
Logging Outfit	287,047.23
Floating Outfit	41,868.54
Autos & Trucks	14,027.39
Live Stock	449.00
Office Equipment	6,031.09
Blackwater Camp—Preliminary	46,121.36
Oldtown Camp—Preliminary	87,089.79
Locomotive Shed	1,899.36
Log Car Equipment	2,650.41
Land—Mill Site	26,200.00
	1,202,398.37

Timber standing in Dixie, Lafayette and Taylor Counties—Approximately two hundred and fifty million feet.

Total Number Employees

Palatka	320
Dixie County	200
Blackwater Camp	60
	580
Population depending on industry	2,900

Actual Weekly Pay Rolls

Palatka	$7,922.45
Logging Camps	6,108.41
	14,030.86
Avg. Mill & Camps	7,015.43

[fol. 416] Wilson Cypress Company, Palatka, Florida, October 19th, 1926

Increase in Wilson Cypress Company's Capital Assets February 1, 1922, to February 1, 1926

This increase represents Capital outlay covering costs of changes and additions to our Plant and Equipment to enable us to increase our productions and take care of the additional life of our operation in manufacturing our holdings in Dixie, Lafayette and Taylor Counties.

	Feb. 1, 1922	Feb. 1, 1926	Increase
Autos & Trucks	$3,382.55	$14,027.39	$10,644.84
Buildings	154,455.68	308,638.04	154,182.36
Logging Outfit	119,911.51	287,047.23	167,135.72
Mill Site	22,670.00	26,200.00	3,530.00
Live Stock	7,522.78	449.00	.....
Machy. & Equip.	125,887.97	380,376.16	254.488.19
Office & Equip.	3,590.25	6,031.09	2,440.84
	437,420.74	1,022,768.91	592,421.95
Less decrease in live stock			7,073.78
Net increase			$585,348.17

In addition to the above outlay of 585,348.17 in Capital Assets, we suffered a very heavy loss caused by a five months shut down of our Saw Mill during a very favorable selling period. The only reason for this shut down being because of the time required for making changes and additions we deemed necessary to enlarge our plant in order to take care of our timber in above counties. The minimum loss based on our Use & Occupancy Insurance at $500.00 per day would represent a further loss of $65,000.00.

[fol. 417] EXHIBIT 33

STATE OF FLORIDA,
—— County:

This contract, made and entered into in duplicate this 19th day of December, A. D. 1918, by and between United States Railroad Administration, W. G. McAdoo, Director General of Railroads, Atlantic Coast Line, party of the first part, hereinafter called Railroad, and Putnam Lumber Company, a corporation organized and existing under and

by virtue of the laws of Wisconsin, party of the second part, hereinafter called Lumber Company.

Whereas Lumber Company owns about 210,000 acres of virgin timber in Taylor County, Florida, the bulk of which is located northeast of Clara, Taylor County, Florida, a station on the line of Railroad known as the Perry Branch of Railroad, which timber the Lumber Company proposes to cut into logs and desires the Railroad thereafter to transport as logs cut from said timber from the certain track hereinafter mentioned to be constructed near Clara, Florida, over the lines of railroad known as Perry Branch, and J&SW Branch to a certain track heretofore constructed at Milldale, Florida which is the eastern terminus of the said J&SW Branch line of Railroad, at which point the train on which said logs were transported is to be delivered to Lumber Company for unloading, and

Whereas, Lumber Company has built or proposes to build a spur track leading from the said side track to be constructed near Clara, into the woods and into the logging camp, and desires the right to connect the said spur track to the side track near Clara, to the end that cars from Railroad may be carried by the Lumber Company into the woods for loading and thereafter returned and delivered to said Railroad on the side track to be constructed as aforesaid, near Clara, which service is to be performed at the sole expense of Lumber Company.

Whereas, the parties hereto have agreed upon the terms hereinafter set forth.

Now therefore, this agreement witnesseth: That, for and in consideration of the covenants and agreements hereinafter set forth and contained to be mutually kept and performed, and in further consideration of the sum of One Dollar, by each of the parties hereto to the other paid, the receipt of which is hereby acknowledged, the said parties do hereby mutually covenant and agree each with the other as follows; to-wit:

First: Railroad, for its part, covenants and agrees that it will at its own cost and expense furnish the necessary material and labor to construct and maintain side track near Clara, hereinbefore mentioned, from the switch point to the clearance point.

Railroad Company further agrees that it will and it does hereby grant to the said Lumber Company the right to connect track of the Lumber Company to and with the side track to be constructed near Clara.

Second. Railroad further agrees that it will furnish for the service contemplated by this contract, a sufficient number of cars to enable the Lumber Company to load and ship a minimum of forty (40) loaded logging cars every other day (Sundays and legal holidays excepted), from the said point near Clara, during the life of this agreement, and [fol. 418] that it will furnish an engine and the necessary crew to move the same, and that it will deliver the said cars upon the side track near Clara at the rate of forty cars every other day (except Sundays and legal holidays).

The Railroad further agrees that when said cars shall have been placed by it upon the said side track aforesaid near Clara, that the Lumber Company shall have, and is hereby granted the right to take the same, and to move them under its own power, and in charge of its own crews over the spur or woods track hereinbefore referred to, into the woods and logging camp of the Lumber Company, for the purpose of loading them, said cars to be loaded by the Lumber Company in the woods, the Lumber Company furnishing, at its own cost, all necessary stanchions and other appliances for the purpose of properly securing the lading on the cars, and when loaded, to be returned by the Lumber Company, under its own power, and in charge of its own crews, and delivered to the Railroad by placing the same upon the track to be built as aforesaid near Clara, Florida, all within forty eight hours of the time that said train is placed on said track by the Railroad as aforesaid. Upon return of said cars loaded with logs as aforesaid, Railroad agrees that it will accept delivery of the train made up thereof on said side track near Clara, and that it will move the said train from the said side track over its line to Milldale, Fla., which is the eastern terminus of the J&SW Branch which with the Perry Branch of the Railroad is the route over which the log train service herein referred to is to be performed, said movements to be made as hereinbefore contemplated, to-wit—at the rate of forty loaded cars every other day (Sundays and legal holidays excepted). Upon arrival of said train at Milldale, Fla., Lum-

ber Company will promptly at its sole cost and expense, unload said logs from the cars in said train, and re-deliver to Railroad the cars made empty, in ample time to enable Railroad to make the schedule hereinbefore provided for which said time it is hereby mutually agreed shall not exceed twenty four hours from the time said train is delivered by the Railroad at Milldale. After the cars in said train shall have been unloaded by Lumber Company, Railroad agrees that it will take the said cars with its own crews and under its own power, and return the same to said track near Clara, for re-loading, by the Lumber Company as hereinbefore set forth, and that it will thereafter continue the schedule movement of said logs at said rate of forty carloads every other day (Sundays and legal holidays excepted), Railroad reserving the right to itself to exercise the option at any time it may desire to reduce the number of cars in any train or trains of logs from forty loaded cars to thirty loaded cars, throughout the life of this contract. It is understood and mutually agreed that the time limit fixed for the loading and return of the cars to be furnished by the Railroad from the woods camp, where the timber will be cut, and also the time for unloading and re-delivering said cars at Milldale, Florida, are both of the essence of this contract, and that the limit herein fixed is made necessary in order to carry out the schedule movement desired by the lumber company and agreed to by the Railroad herein.

Third. The Railroad further agrees that it will publish, post, and file, as required by law, and will charge the Lumber Company thereunder, a tariff fixing the rate for the transportation of logs from said side track near Clara, Florida, to Milldale, Florida, said rate to apply to the trains to be moved as provided hereinbefore under this contract.

In consideration of the premises the Lumber Company agrees

Fourth. That Lumber Company will at its own cost and expense furnish all material and labor for and under the supervision of Railroad will construct and maintain that part [fol. 419] of the side track to be built near Clara beyond the clearance point. It being understood and agreed mutually that that part of said side track lying on right of

way of Railroad shall belong to Railroad and that part beyond right of way line shall belong to Lumber Company.

That it will, at its own proper cost and expense, construct and thereafter maintain a spur or woods track, to be connected with the side track of the Railroad to be built near Clara, Florida, as aforesaid, leading from thence into the timber of the Lumber Company, and that it will take said cars when placed by the Railroad on the said side track near Clara for loading as aforesaid, and will move the same into the woods over its spur or woods track, under its own power and in charge of its own crews, and will, at its own risk, cost and expense, load the logs cut as aforesaid, upon said logging cars; that it will, at its own cost, furnish all necessary stanchions and other appliances for properly fastening the lading thereon in accordance with the requirements of the Railroad, and that it will load and return said train to the said side track near Clara within forty eight hours from the time at which it was placed there by the said Railroad as aforesaid. And the Lumber Company further agrees that in loading said cars with logs, it will in no case load the same beyond the capacity of said cars. The Lumber Company further agrees that when said woods track is completed, it will equip and maintain the same in proper condition for the safe operation of the cars of the Railroad thereover, and that it will provide the necessary engines, enginemen and crews for the purpose of moving said cars into the woods and return the same to the siding as aforesaid. The Lumber Company further agrees that when said loaded cars shall have been placed by the Railroad on the track at Milldale, as aforesaid, that said cars shall be unloaded and re-delivered to the Railroad on said track at Milldale within twenty four hours from the time at which they were placed there by the said Railroad, the service to be performed by Lumber Company at its cost and expense.

Fifth. The Lumber Company further agrees that it will pay to the Railroad for the transportation of said logs as aforesaid from said siding near Clara, Florida, to Milldale, Florida, at the rates to be published and filed by the Railroad (idler cars to be paid for at the minimum fixed in said tariff), and further agrees that it will furnish for transportation, at the said rate, as hereinbefore set forth, a train

to consist of forty loaded cars every other day during the life of this contract (Sundays and legal holidays excepted). If idler cars are used in moving said logs, the Lumber Company agrees that they shall be loaded or arranged in accordance with the rules or requirements of the Railroad.

It is expressly understood and agreed by and between the parties hereto: That the minimum aforesaid is necessary in order to justify the establishment and maintenance of the rate hereinbefore referred to, to be fixed, published and filed as aforesaid and that said minimum is to apply throughout the entire cut of logs of the Lumber Company as aforesaid, during the life of this contract, except as provided for in the second article herein.

Sixth. The Lumber Company further agrees that it will, and it hereby assumes full responsibility for the care and condition of the cars of the Railroad aforesaid, while the said cars are in possession of the Lumber Company on the woods track leading to its timber camp; or on the track at Milldale, and the Lumber Company hereby covenants and agrees that it will pay to the Railroad the amount of any injury, loss or damage to said cars while in its possession as aforesaid.

Seventh. The Lumber Company further agrees that it will promptly pay to the Railroad all freight and demurrage charges due for the movement of said logs, or for the detention of its cars whereon the same are loaded, for [fol. 420] a period greater than that permitted in the proper and lawful tariffs of Railroad, governing the same. For the purpose of computing the demurrage, it is hereby agreed that the cars shall be deemed to have been placed for loading when the same are delivered by the Railroad upon siding to be constructed near Clara, Florida, as aforesaid, and shall be deemed placed for unloading when delivered upon the track at Milldale, Florida.

Eighth. The Lumber Company further agrees that it will execute a good and sufficient bond, with corporate surety to be approved by the Railroad, in the penal sum of Ten Thousand Dollars, said bond to run to the Railroad and to be conditioned so as to guarantee to the Railroad the full and complete performance by the Lumber Company of all of the covenants and obligations herein by the Lumber

Company undertaken and assumed, and so as to indemnify the Railroad against loss, costs and damages by reason of any act of malfeasance or negligence on the part of the Lumber Company, or its employees, in connection with the operations of the trains provided for in this contract after delivery of said trains to the Lumber Company, for handling as aforesaid, and at all times while said trains are in the care and under the control of the said Lumber Company.

Ninth. It is mutually covenanted and agreed by and between the parties hereto: That, if at any time during the continuance of this contract, the mill of the Lumber Company at Milldale, Florida, shall be damaged or destroyed by fire, or otherwise, or if any accident shall happen to the machinery of the same, so that the Lumber Company shall be forced to shut down the same fore repairs or in event of a strike on the part of the employees of the Railroad, or in the event that either the Railroad or the Lumber Company, for any unavoidable cause, shall be temporarily prevented from performing its part of this contract, then such party may give reasonable notice to the other party, requiring as of its right, the temporary suspension of the performance of this contract for a definite and reasonable period to be named in such notice; and thereupon, the performance of this contract shall be temporarily suspended for the period named in such notice; provided, however, that such suspension shall not, in any event, exceed six months at any one time.

Tenth. It is further mutually covenanted and agreed by and between the parties hereto: That this contract is made pursuant to and is intended to be subject to, all of the laws of the United States, and the State of Florida thereto applicable, and that any change, amendment, alteration, or cancellation hereof, or any part hereof, deemed, required, or rendered necessary by any such law of the United States, or of the State of Florida, or by virtue of any judgment or order of a Court or Commission of competent jurisdiction, shall not be deemed a breach of the terms and conditions of this agreement.

Eleventh. It is further mutually understood and agreed: That this contract shall take effect and become operative

on the 20th day of December, 1918, and shall thereafter continue in force and effect until terminated by either party hereto by the giving to the other party of thirty days' written notice of the intention to terminate this contract.

It is hereby mutually understood and agreed that if, during the continuance of this contract, possession and control of the railroad of Atlantic Coast Line Railroad Company is relinquished by the United States Railroad Administration, then said Company shall be substituted herein as the party of the first part and shall be entitled to all the rights and subject to all the obligations herein provided for as to said party of the first part.

[fol. 421] In witness whereof, the parties hereto have caused this agreement to be executed in duplicate the day and year first above written.

United States Railroad Administration, W. G. Mc Adoo, Director General of Railroads, Atlantic Coast Line Railroad, by Lyman D. Nano, Federal Manager. Putnam Lumber Company, by Wm. O'Brien, Prst. Attest: A. J. Marsh, Secretary. (Seal.)

Witness: G. W. Smithers, E. C. Hammond, W. L. Fleishel, T. B. Keith.

Approved: C. J. Murchison, General Superintendent.

Approved: H. O. McAuteen, District Superintendent.

Approved as to location: H. B. Laird, Engineer of Roadway.

Approved as to form: J. L. Doggett, Division Counsel.

The foregoing contract is hereby approved and adopted this 13th day of May, 1919.

Atlantic Coast Line Railroad Company, by I. R. Kenly, President.

Attest: J. B. Post, Jr., Assistant Secretary. (Seal Atlantic Coast Line Railroad Company, Incorporated ——.)

[fol. 422] Form S-735-A

Tax Paid on Original

The Ætna Casualty and Surety Company

Hartford, Connecticut

Certificate of Authority of Resident Assistant Secretary

Know all Men by these presents, that V. J. Armstrong has been and is hereby appointed Resident Assistant Secretary of The Ætna Casualty and Surety Company, of Hartford, Connecticut, at Jacksonville, Fla., and as such Resident Assistant Secretary has power and authority to affix the seal of the Company to, and attest on behalf of the Company, any and all bonds and undertakings, and all bonds and undertakings sealed and attested by him, when signed by a duly appointed Resident Vice-President, shall be as valid and binding upon the Company as if said bonds and undertakings had been sealed and attested by the Secretary.

This appointment is made under and by authority of the following By-Laws adopted by the Board of Directors of the Company at a meeting duly called and held on the 28th day of December, 1911.

Article 8. Resident Officers, Attorneys-in-Fact and Agents

Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-Fact and Agents to represent and act for and on behalf of the Company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any time remove any such Resident Vice-President, Resident Assistant Secretary, Attorney in-Fact or Agent and revoke the power and authority given him.

Section 3. Resident Assistant Secretaries may, subject to the provisions and limits named in their certificate of authority, affix the seal of the Company to and attest on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same

extent as the Secretary or any other Officer could bind it; such bonds and undertakings, however, to be signed and executed in every instance by a duly appointed Resident Vice-President.

In Witness Whereof, The Ætna Casualty and Surety Company has caused these presents to be signed by its Secretary, and its corporate seal to be hereto affixed, this 13th day of December, A. D., 1917.

The Ætna Casualty and Surety Company, by D. H. Gage, Secretary. (Seal.)

State of Connecticut,
County of Hartford, ss:

On this 13th day of December, A. D. 1917, before me personally came D. H. Gage, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Hartford, State of Connecticut; that he is the Secretary of The Ætna Casualty and Surety Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

E. M. Ather, Notary Public. My Commission Expires Jan. 31, 1922.

[fol. 423] Form S-735-A

Tax Paid on Original

The Ætna Casualty and Surety Company

Hartford, Connecticut

Certificate of Authority of Resident Assistant Secretary

Know all Men by these presents, that V. J. Armstrong has been and is hereby appointed Resident Assistant Secretary of The Ætna Casualty and Surety Company, of Hartford, Connecticut, at Jacksonville, Fla., and as such Resident Assistant Secretary has power and authority to affix the seal of the Company to, and attest on behalf of

the Company, any and all bonds and undertakings, and all bonds and undertakings sealed and attested by him, when signed by a duly appointed Resident Vice-President, shall be as valid and binding upon the Company as if said bonds and undertakings had been sealed and attested by the Secretary.

This appointment is made under and by authority of the following By-Laws adopted by the Board of Directors of the Company at a meeting duly called and held on the 28th day of December, 1911.

Article 8. Resident Officers, Attorneys-in-Fact and Agents

Section 1. The President, any Vice-President or the Secretary may from time to time appoint Resident Vice-Presidents, Resident Assistant Secretaries, Attorneys-in-Fact and Agents to represent and act for and on behalf of the Company, and either the President, any Vice-President, the Secretary or the Board of Directors may at any time remove any such Resident Vice-President, Resident Assistant Secretary, Attorney in-Fact or Agent and revoke the power and authority given him.

Section 3. Resident Assistant Secretaries may, subject to the provisions and limits named in their certificate of authority, affix the seal of the Company to and attest on behalf of the Company any and all bonds and undertakings and other writings obligatory in the nature of a bond, and may bind the Company thereby as fully and to the same extent as the Secretary or any other Officer could bind it; such bonds and undertakings, however, to be signed and executed in every instance by a duly appointed Resident Vice-President.

In Witness Whereof, The Ætna Casualty and Surety Company has caused these presents to be signed by its Secretary, and its corporate seal to be hereto affixed, this 13th day of December, A. D., 1917.

The Ætna Casualty and Surety Company, by D. N. Gage, Secretary. (Seal.)

State of Connecticut,
County of Hartford, ss:

On this 13th day of December, A. D. 1917, before me personally came D. N. Gage, to me known, who, being by me

duly sworn, did depose and say: that he resides in the City of Hartford, State of Connecticut; that he is the Secretary of The Ætna Casualty and Surety Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

E. M. Ather, Notary Public. My Commission Expires Jan. 31, 1922. (Seal.)

[fol. 424] The Ætna Casualty and Surety Company

Endorsement

(Certificate of Change of Name.)

Know all Men by these Presents, That the name of The Ætna Accident and Liability Company has been changed to The Ætna Casualty and Surety Company by resolution of the General Assembly of the State of Connecticut and operative on the third of May, 1917, by its acceptance by vote of the stockholders of said Company at a meeting warned and held for that purpose and the filing of a certified copy of such vote of acceptance with the Secretary of State, and that all appointments of Resident Vice Presidents, Resident Assistant Secretaries and Attorneys in Fact to sign and execute bonds and undertakings in accordance with their Certificates of Authority issued in the name of The Ætna Accident and Liability Company remain unimpaired and the authority of said Resident Vice Presidents, Resident Assistant Secretaries and Attorneys in Fact to sign and execute bonds and undertakings in accordance with said Certificates of Authority and in the name of The Ætna Casualty and Surety Company is hereby confirmed.

In Witness Whereof, The Ætna Casualty and Surety Company has caused these presents to be signed by its Secretary, and its corporate seal to be hereto affixed this 29th day of October, A. D. 1917.

The Ætna Casualty and Surety Company, by D. G. Stone, Secretary. (Seal.)

STATE OF CONNECTICUT,
County of Hartford, ss:

On this 29th day of October, A. D. 1917, before me personally came D. G. Stone, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Hartford, State of Connecticut; that he is the Secretary of The Ætna Casualty and Surety Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; and that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

E. M. Ather, Notary Public. My Commission Expires Jan. 3, 1922. (Seal.)

Form 1546.

[fol. 425] The Ætna Accident and Liability Company, Hartford, Connecticut

Morgan G. Bulkeley, President

Duplicate Bond

Know all Men by these Presents, that we, Putnam Lumber Company a corporation created and existing under and by virtue of the laws of the State of Wisconsin, as Principal, and Ætna Casualty and Surety Company, a corporation created and existing under and by virtue of the laws of Connecticut, duly authorized by law to do business in the State of Florida, as Surety, are held and firmly bound unto the United States Railroad Administration, W. G. McAdoo, Director General of Railroads, Atlantic Coast Line Railroad, in the just and full sum of Ten Thousand Dollars, to the payment whereof well and truly to be made we do hereby bind ourselves, our successors and assigns, jointly and severally firmly by these presents, or if said Administration should, during the life of this bond, relinquish the properties of the Atlantic Coast Line Railroad Company, a corporation created and existing under and by virtue of the laws of the State of Virginia, then and in that event shall Principal and Sureties hereinabove mentioned be and become held and firmly bound unto the said Atlantic

Coast Line Railroad Company under the provisions herein contained, instead of unto the said Administration. Sealed with our seals and dated this Nineteenth day of December, A. D. 1918.

Whereas, Putnam Lumber Company, Principal, herein did on the Nineteenth day of December, 1918, enter into contract with the United States Railroad Administration, W. G. McAdoo, Director General of Railroads, Atlantic Coast Line Railroads, hereinafter called Railroad, under the terms of which said contract Railroad agreed to haul on trains to be furnished by it at the rate and the amount therein specified logs to be cut by the Putnam Lumber Company from its timber lands near Clara, Florida, thence to Milldale, Florida, and whereby the said Railroad further agreed that the said Putnam Lumber Company should have, and it was granted the right to take the cars to be furnished by the said Railroad into the woods to its timber lands for the purpose of loading, provision also being contained in said contract that said cars would be delivered to said Putnam Lumber Company on tracks of Railroad at Milldale, Florida, for the purpose of unloading, all subject to the terms, limitations and conditions in said contract set forth, the said contract being hereby referred to as a part hereof, and

Whereas, the eighth section of said contract contemplated and stipulated that the said Putnam Lumber Company should furnish to the said Railroad a bond in the penal sum of Ten Thousand Dollars, conditioned so as guarantee to the Railroad the full and complete performance by the Lumber Company of all of the convenants and obligations in said contract set forth and undertaken by the said Lumber Company, and so as to indemnify the said Railroad against all loss, costs and damages by reason of any act of malfeasance on the part of the Lumber Company, or its employees, in connection with the operation of the trains provided for in said contract after delivery thereof to the Lumber Company, for handling as set out in said contract, and at all times while said trains are in the care and under the control of the said Lumber Company.

Now, therefore, the condition of this obligation is such: That, if the said Putnam Lumber Company, Principal herein, shall during the continuance of said contract well

and truly perform all of the covenants and obligations in said contract by said Lumber Company undertaken and assumed, and shall also indemnify and save harmless the said Railroad against any and all loss, costs and damages, by [fol. 426] reason of any act of malfeasance or negligence on the part of the said Lumber Company or its employees occurring in connection with the operation of the trains provided for in said contract, after delivery of said trains to the Lumber Company for handling, as in said contract set out, and at all times while said trains are in the care and under the control of the said Lumber Company then, and in that event, the bond shall be void, otherwise to remain in full force and virtue.

Putnam Lumber Company, by Wm. O. Brien, President. Attest: M. L. Fleishel. Attest: A. J. Muth, Secretary. Ætna Casualty and Surety Company, by W. M. McOrary, Resident Vice-President. Attest: M. L. Fleishel. Attest: V. J. Armstrong, Resident Assistant Secretary.

[fol. 427] EXHIBIT 34

Atlantic Coast Line Railroad Company

File No. 39,159

Jacksonville, Fla., May 30, 1923. be.

Putnam Lumber Company, Mr. M. L. Fleishel, Vice Pres., Jacksonville, Fla.

DEAR SIR: I have your letter May 24th and am returning herewith duplicate-original of contract dated February 26th, 1923 between our companies covering logging train service between Cross City and Milldale. I have noted carefully your remarks as to the provision for a minimum train of 40 cars which you state was not intended. My file covering the correspondence leading up to the execution of this agreement very clearly indicates that 40 cars per train was decided upon and desired.

In regard to the ability of locomotives assigned to this service being able to handle a train of 40 cars. At the

present time we have in service on the J. & S. W. locomotives that cannot handle 40 cars of logs, but within a very short time all of the locomotives in this service will be capable of handling 40 or more cars, therefore, I do not think it necessary to change the contract.

We will, of course, not bill you for failure to furnish a train of 40 cars on the dates we supply a locomotive not capable of handling 40 cars. In other words if we should furnish today a locomotive capable of handling only 30 cars and 30 cars are moved into Milldale we will not bill you with the 10 cars or for failure to furnish the full 40 cars.

Yours truly, O. H. Page, General Superintendent.

[fol. 428] EXHIBIT 34

Form 701

Atlantic Coast Line Railroad Company

File No. 39,159

Jacksonville, Fla., May 30, 1923. bc.

Putnam Lumber Company, Mr. M. L. Fleishel, Vice Pres., Jacksonville, Fla.

DEAR SIR: I have your letter May 24th and am returning herewith duplicate-original of contract dated February 26th, 1923 between our companies covering logging train service between Cross City and Milldale. I have noted carefully your remarks as to the provision for a minimum train of 40 cars which you state was not intended. My file covering the correspondence leading up to the execution of this agreement very clearly indicates that 40 cars per train was decided upon and desired.

In regard to the ability of locomotives assigned to this service being able to handle a train of 40 cars. At the present time we have in service on the J. & S. W. locomotives that cannot handle 40 cars of logs, but within a very short time all of the locomotives in this service will be capable of handling 40 or more cars, therefore, I do not think it necessary to change the contract.

We will, of course, not bill you for failure to furnish a train of 40 cars on the dates we supply a locomotive not capable of handling 40 cars. In other words if we should furnish today a locomotive capable of handling only 30 cars and 30 cars are moved into Milldale we will not bill you with the 10 cars or for failure to furnish the full 40 cars.

Yours truly, O. H. Page, General Superintendent.

[fol. 429] This agreement, made and entered into, in duplicate, this 26th day of February, 1923, by and between Atlantic Coast Line Railroad Company, a corporation under the laws of the State of Virginia, hereinafter called the Railroad, party of the first part, and Putnam Lumber Company, a corporation organized and existing under the laws of the State of Wisconsin, hereinafter called the Lumber Company, party of the second part,

Witnesseth: That

Whereas the Lumber Company owns approximately 500 million feet of pine and cypress standing timber in Lafayette and Dixie Counties, Florida, near Cross City, Dixie County, on the line of the Atlantic Coast Line Railroad Company between Wilcox and Perry in said State, which said timber the Lumber Company proposes to cut into logs and thereafter cause the pine logs to be transported in train load lots to Milldale, Florida, and the cypress logs to be transported to McGirt's Creek, Florida, at which points the said logs will be manufactured into Lumber, and in connection with the transportation of said pine logs desires the Railroad to transport same from a side track hereinafter mentioned, to be constructed near Cross City, over the lines of the Railroad known as the Perry Branch and the Jacksonville and South Western Branch, to a certain track already constructed by the Lumber Company at Milldale, Florida, at which point the logs are to be delivered to the Lumber Company for unloading; and,

Whereas the Lumber Company has built, or proposes to build, a spur track leading from the said side track to be constructed near Cross City into the woods and into the logging camp of the Lumber Company, and desires the right to connect said spur track to the said side track near

Cross City, so that cars from the Railroad may be carried by the Lumber Company into the woods for loading and thereafter returned and delivered to the Railroad on the side track at Cross City.

[fol. 430] Now, therefore, for and in consideration of the promises and agreements hereinafter contained, to be mutually kept and performed, and in further consideration of the sum of One Dollar ($1.00) by each of the parties to the other paid, the parties hereto have mutually covenanted and agreed as follows:

1. The tracks at Cross City, Florida, on which cars are to be delivered to and received from the Lumber Company hereunder, are constructed or to be constructed and thereafter maintained in accordance with contract dated December 18th, 1922 between the parties hereto. The interchange of cars is to be effected on side tracks between the points marked "A", "B", "C", and "D" on the blue print hereto attached as a part hereof, the tracks between said points hereinafter referred to as the "side track."

2. The Railroad will furnish to the Lumber Company on the said side track, flat cars to be loaded by the Lumber Company with logs cut from the timber aforesaid. The Railroad agrees to permit the Lumber Company, at the sole cost and expense of the Lumber Company, to equip one hundred and seventy (170) of the Railroad's flat cars with permanent stanchions of the type known as Phœnix stake pockets. The Railroad will furnish one hundred and seventy (170) cars of eighty thousand (80,000 lbs.) capacity. The cost and expense of installing and maintaining the permanent stanchions on the cars is to be borne by the Lumber Company and it is understood and agreed that the said cars are not to be considered as permanently assigned to use by the Lumber Company but that in time of car shortage the Railroad will furnish to the Lumber Company such proportion of said one hundred and seventy (170) cars as is in accordance with the law and rules and regulations governing during time of such car shortage. The Lumber Company assumes all risk of damage to the said stanchions by falling off, loss or otherwise, and will at its sole cost and expense make such repairs and—or renewals to the said stanchions as may be necessary in order that

the same may be safe for service. The Railroad shall in no event be obligated hereunder to furnish cars in excess of the one hundred and seventy (170) herein provided for.

[fol. 431] 3. The Railroad agrees that when cars shall have been placed by it on the said side track near Cross City, the Lumber Company shall have the right to move such cars under its own power and in charge of its own crews over the spur track hereinbefore referred to, into the woods and logging camp of the Lumber Company for the purpose of loading same, provided the Lumber Company constructs and thereafter maintains the said spur track in condition satisfactory to the proper officers of the Railroad. The Lumber Company will, as soon as practicable, load the cars at its sole cost and expense, furnishing all necessary stanchions and other appliances for the purpose of properly securing the loads on the cars, and when so loaded will promptly return the said cars under its own power and in charge of its own crews and deliver same to the Railroad in trains of not less than forty (40) cars per day, Sundays and holidays excluded, by placing the said cars on the side track near Cross City, above referred to. Upon return of said cars loaded with logs as aforesaid, the Railroad agrees that it will accept delivery of the train made up thereof on the side track aforesaid and will move the same in trains of a minimum of forty (40) cars from the said side track over its line to Milldale, Florida, and will there deliver the cars on the side track of the Lumber Company. Such movement shall be at the rate of not less than forty (40) cars per day, Sundays and holidays excluded. Upon arrival of the cars at Milldale, Florida, the Lumber Company will promptly, at its sole cost and expense, unload the logs from the cars and re-deliver to the Railroad the empty cars as soon as practical after same are delivered by the Railroad at Milldale.

4. It is mutually understood and agreed that the prompt loading and return by the Lumber Company of the cars to be furnished by the Railroad for the woods camp, where the timber will be cut, and also prompt unloading and redelivering by it of the cars at Milldale are both of the essence of this contract and that such prompt handling is

necessary in order to carry out the schedule movement herein provided for.

[fol. 432] 5. In the event any train crew shall be furnished hereunder by the Railroad, whether in pursuance to the schedule herein provided for or at the call of the Lumber Company, and such crew shall not, for a reason for which the Lumber Company is responsible, be used, then the Lumber Company will promptly on demand reimburse the Railroad for the amount paid such crew not used.

6. The Lumber Company agrees to and does hereby assume full responsibility for the care and condition of the cars of the Railroad while the said cars are in the possession of the Lumber Company at Cross City or at Milldale, and in the event damage shall occur to said cars while in the possession of the Lumber Company, adjustment in relation thereto shall be subject to the rules of the American Railway Association, Division V, Mechanical, covering interchange of cars between Railroads. The Lumber Company will promptly report to the Railroad the destruction of any car while in the possession of the Lumber Company, demurrage charges to cease upon receipt of such notice by the Railroad. Should the Lumber Company fail to report loss of any such car then the demurrage tariffs will continue and remain in force in the same manner as if the car were in good condition for use and operation.

7. The Lumber Company agrees to pay promptly to the Railroad, at rates provided for in current tariffs, all freight and demurrage charges due for the movement of said logs or for the detention of cars for a period greater than that permitted in the proper and lawful tariffs of the Railroad governing same.

8. Cars shall be deemed delivered to the Lumber Company when placed on the designated tracks at Cross City or Milldale and detached from the engine by which they were moved. Cars shall be deemed delivered to the Railroad when placed in trains by the Lumber Company on such tracks and attached or coupled to the engine or engines by which they are to be moved to destination, or when proper bill of lading has been issued therefor.

9. The Lumber Company agrees to furnish to the Railroad a good and sufficient bond with a corporate surety

to be approved by the Railroad, in the penal sum of Ten [fol. 433] Thousand Dollars ($10,000.), conditioned for the faithful performance by the Lumber Company of all of the obligations and agreements herein contained to be kept and performed by the Lumber Company, and so as to indemnify the Railroad against loss, cost and damage by reason of any act of malfeasance or negligence on the part of the Lumber Company or its employees in connection with the handling of the cars after delivery of the same to the Lumber Company, and at all times while the said cars are in the care and under the control of the Lumber Company.

10. If at any time during the continuance of this agreement the mill of the Lumber Company at Milldale, Florida, shall be damaged or destroyed by fire, or otherwise, or if any accident shall happen to the machinery of the same so that the Lumber Company shall be forced to shut down same for repairs, or in the event of a strike on the part of the employees of the Railroad, or in the event that either the Railroad or the Lumber Company for any unavoidable cause shall be temporarily prevented from performing its part of this agreement the said party may give reasonable notice to the other party, requiring as of right the temporary suspension of the performance of this agreement for a definite and reasonable period to be named in said notice, and thereupon the performance of this agreement shall be temporarily suspended for the period named in the notice.

11. The Lumber Company agrees that it will, so far as it lawfully may, cause all rail shipments of lumber manufactured by the Lumber Company from the pine or cypress standing timber aforesaid consigned by the Lumber Company to points reached by lines of the Railroad or its connecting lines or roads, to be routed over the lines of the Railroad and its connections unless the charges for such shipments over the lines of the Railroad and its connections are higher than the lawfully published rates for like transportation of similar shipments over the lines of other transportation companies.

12. This agreement shall become effective on the 25th day of August, 1922, and shall thereafter continue in force

[fol. 434] and effect until terminated by either party hereto, by giving to the other party thirty days' notice in writing of the intention to terminate this agreement.

In witness whereof, the parties hereto have caused these presents to be duly executed the day and year first above written.

Atlantic Coast Line Railroad Company, by Lyman S. Mano, Executive Vice-President. Attest: J. B. Post, Jr., Assistant Secretary. (Seal.) Witnesses: Geo. L. Mitchell, E. T. Hinnant. Putnam Lumber Company, by Wm. O'Brien, Prst. Attest: A. J. Marsh, Secretary. Witnesses: A. H. Shoemaker, Agnes P. Johnson, witnesses as to signature of A. J. Marsh, E. Crosby, as to O'Brien, Bernice Stokes.

Approved: J. N. Brand, Assistant General Manager.

Approved: J. Murchison, General Superintendent.

Approved: H. B. Laird, Engineer. M. & W.

Approved: H. O. McAllister, District Superintendent.

Approved as to Form: Robt. M. Davis, General Attorney.

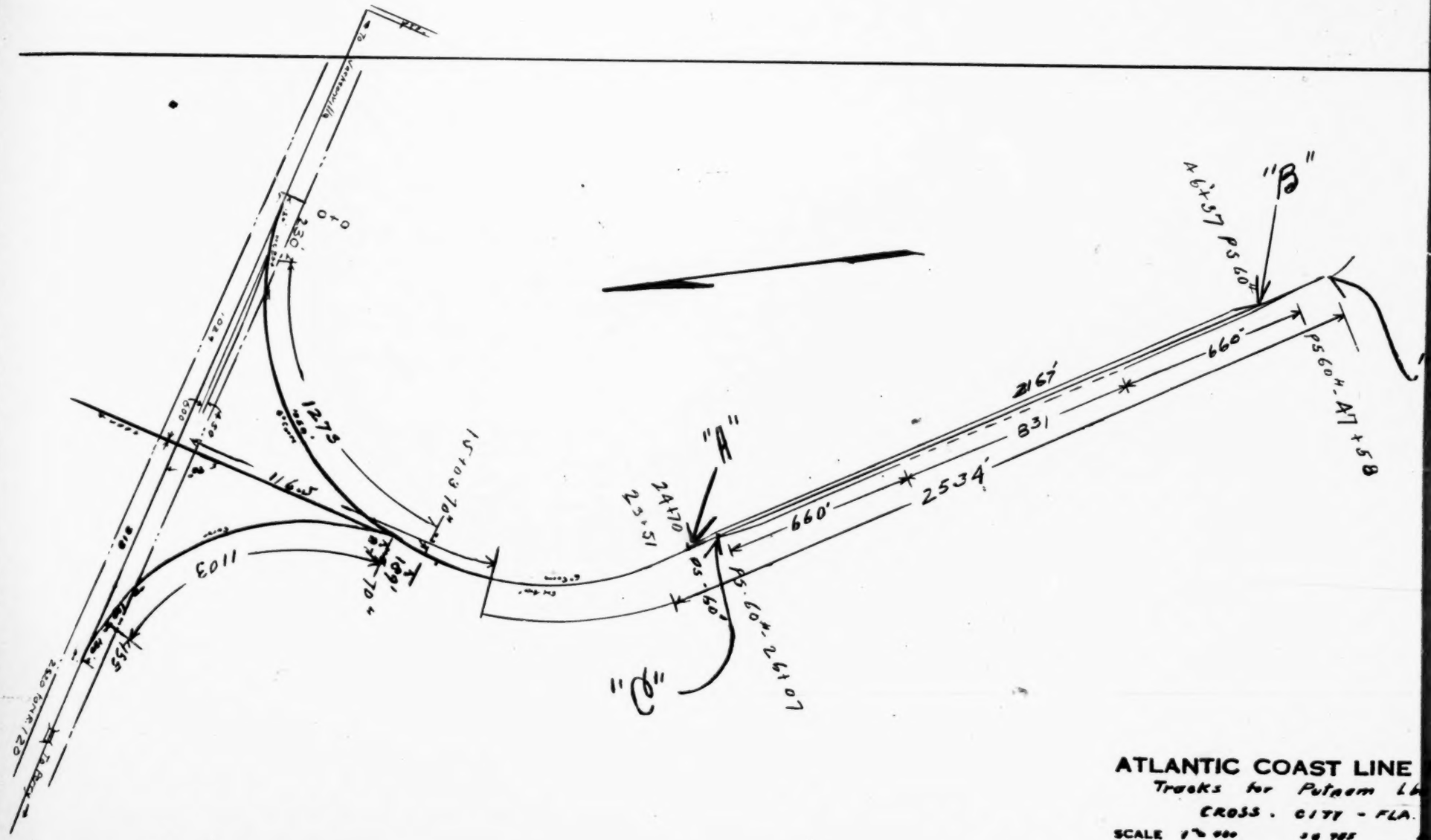
Approved as to Form: Doggett, Chuster & Doggett, Div. Counsel.

[fol. 435] Know all men by these presents, that Putnam Lumber Company, a corporation organized and existing under the laws of the State of Wisconsin, as Principal, and The Ætna Casualty and Surety Company, a corporation organized under the laws of the State of Conn. as Surety, are held and firmly bound unto Atlantic Coast Line Railroad Company in the full and just sum of Ten Thousand Dollars, ($10,000.00), lawful money of the United States, to the payment whereof well and truly to be made we hereby bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals, this 28th day of February, 1923.

The condition of the above obligation is such that:

Whereas the Putnam Lumber Company has entered into an agreement with Atlantic Coast Line Railroad Company,



ATLANTIC COAST LINE

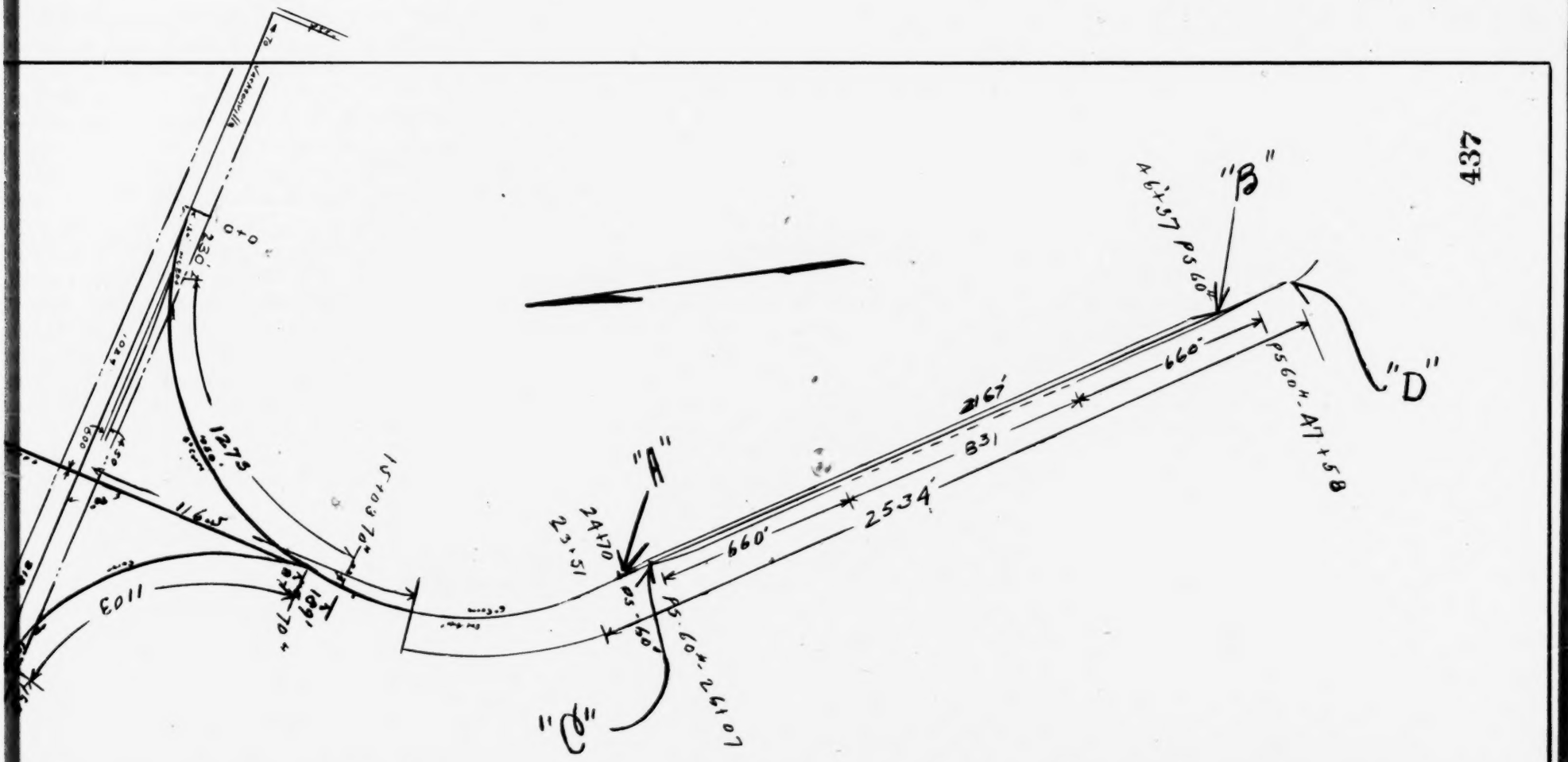
Tracks for Putnam Lb

CROSS . CITY - FLA.

SCALE 1" = 400 36 985

OFFICE OF ENGINEER ON ...

JACKSONVILLE, FLA.



ATLANTIC COAST LINE R. R. CO.

Tracks for Putnam Lbr Co

CROSS . CITY - FLA.

SCALE 1" = 400 38 785 3-22-32

OFFICE OF ENGINEER ON ROADWAY

JACKSONVILLE, FLA.

8488-33

dated the 26th day of February, 1928, with reference to the movement of logs from Cross City, in Dixie County, Florida, over the line of the Atlantic Coast Line Railroad Company; and

Whereas by the sixth paragraph of said agreement the Principal has agreed to furnish to the said Railroad Company a good and sufficient bond in the penalty of Ten Thousand Dollars ($10,000.00), conditioned for the faithful performance by the Principal of all of the obligations of the said agreement and to indemnity the said Railroad Company as in said agreement set out;

Now, therefore, if the said Principal shall well and truly perform all of the obligations in said agreement contained, to be performed by the Principal, and shall indemnify and save harmless the said Railroad Company as in said agreement set out, then this obligation shall be void, otherwise to remain in full force and virtue.

Putnam Lumber Company, by Wm. O'Brien. Prst. Witnesses as to signature of A. J. Marsh: A. H. Shoemaker, Agnes P. Johnson. Attest: A. J. Marsh, Secretary. As to O'Brien: E. Crosby, Bernice Stokes. The Ætna Casualty and Surety Company, by W. M. McEvoy, Resident Vice President. Attest: J. B. Post, Resident Assistant Secretary. Attest: O.

[fol. 436] Atlantic Coast Line Railroad Company

File No. 39159.

Jacksonville, Fla., May 4th, 1923. wtm.

Putnam Lumber Company, Mr. M. L. Fleishel, General Manager, Jacksonville, Florida.

Dear Sir: Referring to the correspondence we have had in regard to movement of logs from Cross City:

I am returning herewith, for your file, the duplicate-original of agreement, dated February 26th, 1923, effective as of August 25th, 1922, between our company and your company, covering special log train service between Jacksonville (Milldale) and Cross City, Florida.

Yours truly, O. H. Page, General Superintendent.

(Here follows map, side folio 437)

[fol. 438] EXHIBIT 35

Sheet 1

Timber Available of Putnam Lumber Company, Dec. 31, 1925

Pine	649,987,317
Cyprus	306,829,651
Hardwood	142,184,000
	1,099,000,968

Investment of Putnam Lumber Company Dec. 31, 1925

At Milldale	$29,405.36
At Ortega	478,521.09
In Boats	49,786.11
Logging Equipment	352,829.62
Logging Railroad	189,458.88
Logging Townsite at Cross City, etc.	131,720.30
	$1,231,721.36

Number of men on Milldale pay roll	459
Number of men on Ortega pay roll	250
Total	709

[fol. 439] Sheet 2

Memorandum of Pine Logs Shipped by the Putnam Lumber Company to Milldale, Florida

Year	No. cars	Feet	Freight pd.	Avg. per M.	Avg. per car
1919	5,512	25,765,759	$95,218.97	$3.69	$17.27
1920	7,304	29,933,068	123,461.74	4.12	16.90
1921	6,407	26,293,072	127,173.99	4.84	19.85
1922	11,540	43,802,678	212,561.73	4.85	18.42
1923	7,686	37,573,706	155,526.05	4.13	20.23
1924	7,510	39,190,690	156,268.43	3.96	20.81
1925	7,451	38,980,736	150,850.42	3.86	20.24
	53,410	241,539,709	$1,021,061.33	$4.22	$19.12

Memorandum of Cypress Logs Shipped by the Putnam Lumber Company to Ortega, Florida

Year	No. cars	Feet	Freight pd.	Avg. per M.	Avg. per car
1922	.....	18,168,902	$50,509.25	$2.78	.....
1923	.....	32,121,571	89,731.38	2.79	.....
1924	.....	30,460,089	86,367.81	2.83	.....
1925	.....	24,990,328	71,058.44	2.84	.....

Memorandum of Cypress Logs Shipped by the Putnam Lumber Company to Ortega, Florida

Year	No. cars	Feet	Freight pd.	Avg. Per M	Avg. per Car
1922	....	18,168,902	$50,509.25	$2.78	....
1923	....	32,121,571	89,731.38	2.79	....
1924	....	30,460,089	86,367.81	2.83	....
1925	....	24,990,328	71,058.44	2.84	....

[fol. 440] EXHIBIT 36

I. C. C. Docket 18364

Witness: Reeves

Statement showing list of saw mills and planing mills on Atlantic Coast Line Railroad in Georgia, as published in A. C. L. R. R. Circular D-4593, Issue of April 9th, 1926

Alapaha
J. H. Bishop
Nix Lumber Co.
Sutton Lumber Co.
Albany
W. A. Stokes
General Lumber Co.
Reynolds Bros. Lumber Co.
Allenhurst
Dunlevie Lumber Co.
Argyle
Garrant Lumber Co.
Bainbridge
Elberta Crate Co.
Farrar Lumber Co.
William Shirley
Boston
Kirby Planing Mill Co.
J. H. Sherrod & Son
Braganza
Braganza Lumber Co.
Brookfield
N. L. Coursey
Cairo
Kelly-Clark Lumber Co.
J. A. Sherrod
G. W. Whaley
D. D. Perkins

EXHIBIT 36—Continued

J. E. Dison
Camilla
Dison & Hudson
J. B. Ryner
T. G. Tyson
Climax
Climax Lumber Co.
J. E. Davies
Cyrene
Battle & Hodges
Dixie
N. B. Jones
Doctortown
Fowler-McCann Lumber Co.
Donaldsonville
John Williams Lumber Co.
Durden
Blue Springs Lumber Co.
Faceville
Lovelace-Young Lumber Co.
W. H. Wells.
Glory
G. W. Sizermore
Hansell
Tyson Lumber Co.
Homerville
J. D. Green
Jakin
R. F. Fuller
Jesup
Gaubert Lumber Co.
Ludowici
Bladen Tie & Lumber Co.
A. T. Roberson
W. F. Wells
Manor
Robert Peagler
Meigs
Morris Bros. Lumber Co.
Newell
Buie & Littlefield
[fol. 441] Ochlocknee
J. D. Stanfill
Mason Lumber Co.
Caldwell & Bushee
Pelham
A. Whaley & Brother
Quitman
Barfield Lumber Co.
W. S. Barwick
J. O. McDonald
D. B. Shealey
F. M. Shore
South Georgia Lumber Co.
R. R. Lowry
Saffold
Harvard & Bryant
Savannah
Bright-Brooks Lumber Co.
Savannah Lumber Co.
Savannah Planing Mill Co.
Whatley Lumber Co.
Reynolds & Manly Lumber Co.
G. S. Patton Lumber Co.
Screven
Crawford & Chauncey
Stockton
W. H. Faucett
Thomasville
W. E. Beverly Lumber Co.
P. J. McCollum Lumber Co.
Kirby Planing Mill Co.
Tifton
Tifton Remilling Co.
Goodman-Golden Co.
Ty Ty
E. J. Cottle
Valdosta
J. N. Bray & Co.
Georgia-Florida Lumber Co.
Jackson Brothers Lumber Co.
Western Lumber Co.

EXHIBIT 36—Continued

Walthourville	Ways
J. E. Wells	Liberty Lumber Co.
W. J. Roberson	W. H. Bashlor
Waycross	Whigham
Enterprise Mfg. Co.	A. S. Curry
Hebard Cypress Co.	Willacoochee
Satilla River Lumber Co.	Ladson Lumber Co.

Authority: A. C. L. R. R. Co. G. F. O. No. 8784 Circular No. D-4593.

Jacksonville, Fla., January 18th, 1927.

EXHIBIT 37

I. C. C. Docket 18364

Witness: Reeves

Statement showing list of points on Atlantic Coast Line Railroad in Georgia at which there are in operation as of January 11, 1927, saw mills or planing mills, together with names of operators and their monthly production in footage of lumber. The total production of all such mills is divided as between mills receiving their logs by various means of transportation

Manufacturing point and operator	Monthly production, in feet	Source of log supply	Means of log transportation: By truck or team, average haul—miles	Means of log transportation: By common carrier, average haul—miles
Alpha:				
J. H. Bishop	100,000	Ga.	2	
Albany:				
Brown Lumber Co.	150,000	Ga.	6	
Reynolds Bros. Lbr. Co.	1,500,000	Ga.		ACL CofGa SAL GSW&G 30
Argyle:				
Garrant Lumber Co.	600,000	Ga.	Will log over own log road, mill not yet operating, monthly production estimated.	
Bainbridge:				
William Shirley	250,000	Ga.	1	
Blackshear:				
Davis Randall	75,000	Ga.	2½	
A. M. Johnson	100,000	Ga.	3	

Boston:				
J. H. Sherrod & Sons	100,000	Ga.	4	
Brunswick:				
Georgia Veneer & Package Co.	500,000	via water		
Lang Planing Mill	20,000	Ga.		ACL Sou AB&A 30
Brunswick Lumber Co.	150,000	Ga.	15	
Hercules Powder Co.	400,000	via water		
[fol. 443] Cairo:				
J. A. Sherrod	140,000	Ga.	1	
G. W. Whaley	100,000	Ga.	3	
P. J. McCollum	200,000	Ga.	7	
Camilla:				
Dison & Hudson	150,000	Ga.	2	
T. G. Tyson	200,000	Ga.	5	
B. F. Maney	100,000	Ga.	1	
Climax:				
Climax Lumber Co.	220,000	Ga.	8	
Dixie:				
N. B. Jones	100,000	Ga.	4	
Durden:				
Blue Springs Lumber Co.	75,000	Ga.	2	
Doctortown:				
Case-Fowler Lumber Co.		Ga.		Via water and——miles over ACL
Faceville:				
Lovelace-Young Lbr. Co.	800,000	Ga.	6	
Folkston:				
J. H. Johnson	75,000	Ga.	1	
Fort Mudge:				
J. J. Williams Co.	150,000	Ga.	2	
Glory:				
G. W. Sizermore	100,000	Ga.	7	
Homerville:				
B. Oliver	200,000	Ga.	5	

Exhibit 37—Continued

Manufacturing point and operator	Monthly production, in feet	Source of log supply	Means of log transportation: By truck or team, average haul—miles	Means of log transportation: By common carrier, average haul—miles
Jesup:				
Garbutt Lumber Co.	300,000	Ga.		ACL & Sou 45
Ludowici:				
Bladen Tie & Lumber Co.	125,000	Ga.	2	
W. F. Wells	100,000	Ga.	3	
Meigs:				
Morris Bros. Lumber Co.	100,000	Ga.	4	
[fol. 444] Newell:				
Buie & Littlefield	40,000	Ga.	2	
Ochlocknee:				
J. D. Stanfill	150,000	Ga.	4	
Mason Lumber Co	200,000	Ga.	8	
Tyson Lumber Co.	250,000	Ga.	6	
Pelham:				
A. Whaley & Brothers	75,000	Ga.	6	
Quitman:				
Barfield Lumber Co.	800,000	Ga.		South Ga Rwy 1
F. M. Shore & Co.	300,000	Ga.	18	
W. S. Barwick	150,000	Ga.	2	
South Georgia Lbr. Co.	200,000	Ga.	6	
Savannah:				
Atlantic Tie & Timber Co	100,000			ACL SAL S&A CofGa 150
Pennwaller Lumber Co.	60,000	Planing mill only		
Pierpont Mfg. Co.	600,000	Ga. & S. C.		ACL SAL S&A CofGa 50

Reynolds-Manley Lbr. Co	1,000,000	Ga. & S. C.		ACL SAL S&A CofGa 50
Savannah Lumber Co.	85,000	Ga.		ACL SAL S&A Sou and Cof Ga 30
Savannah Planing Mill Co.	150,000	Ga.		SAL S&A Cof Ga 50
Savannah River Lumber Co.	1,500,000	Ga. & S. C.	Via water	.....
Southern Box & Lumber Co.	40,000	Ga.		SAL Ry 15
Screven:				
Crawford & Chauncey	100,000	Ga.	5	.....
[fol. 445] Sylvester:				
Simmerly & Lawrence	100,000	Ga.	6	.....
Thomasville:				
P. J. McCollum Lbr. Co.	240,000	Ga.	7	.....
Kirby Planing Mill Co.	200,000	Planing mill only		.....
Tifton:				
Tifton Remilling Co.	200,000	Planing mill only		.....
Goodman-Golden Lbr. Co.	150,000	Ga.	7	.....
N. L. Coursly	200,000	Ga.	7	.....
Ty Ty:				
E. J. Cottle	80,000	Ga.	6	.....
Valdosta:				
Baker & Co.	75,000	Ga.	1	.....
J. N. Bray & Co.	300,000	Ga.	12	.....
Jackson Bros. Lbr. Co.	800,000	Ga.		ACL G&F GS &F 25
Walthourville:				
W. I. Roberson	20,000	Ga.	2	.....
Waycross:				
Enterprise Mfg. Co.	100,000	Planing mill only		.....
Hiers Planing Mill Co.	100,000	Planing mill only		.....

Exhibit 37—Continued

Manufacturing point and operator	Monthly production, in feet	Source of log supply	Means of log transportation: By truck or team, average haul—miles	Means of log transportation: By common carrier, average haul—miles
Whigham:				
A. S. Curry	150,000	Ga.	3	
Ways:				
R. P. Baily	150,000	Ga.	1	
Willacoochee:				
Ladson Lumber Co.	220,000	Ga.	4	

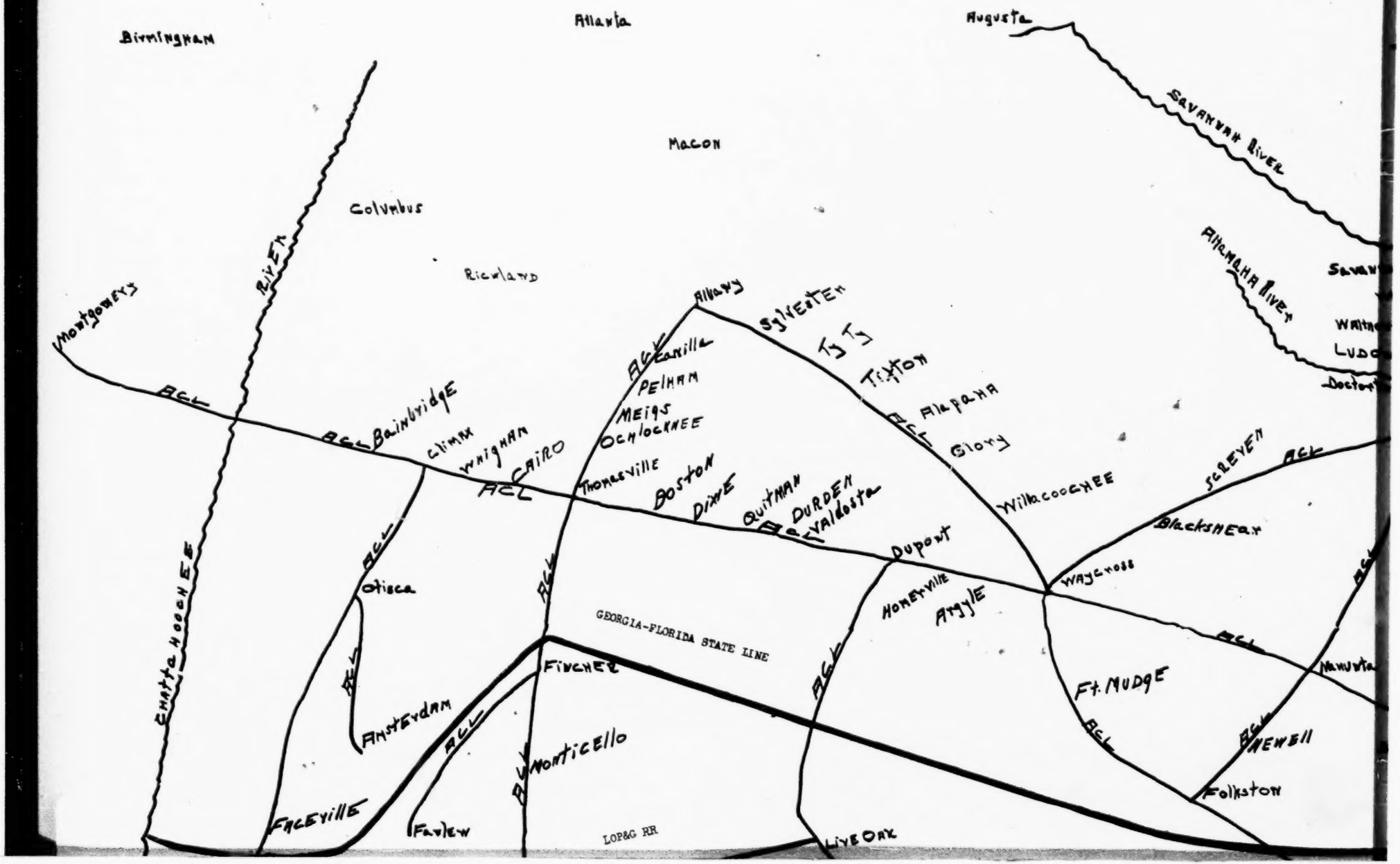
[fol. 446]

Summary

No. of mills	Production, in feet, per month: Mills logging over common carrier	Mills logging by truck or team	Mills logging via water	Planing mills (no logging)	Argyle mill (estimated)	Total
64	5,395,000	7,010,000	2,400,000	660,000	600,000	16,065,000

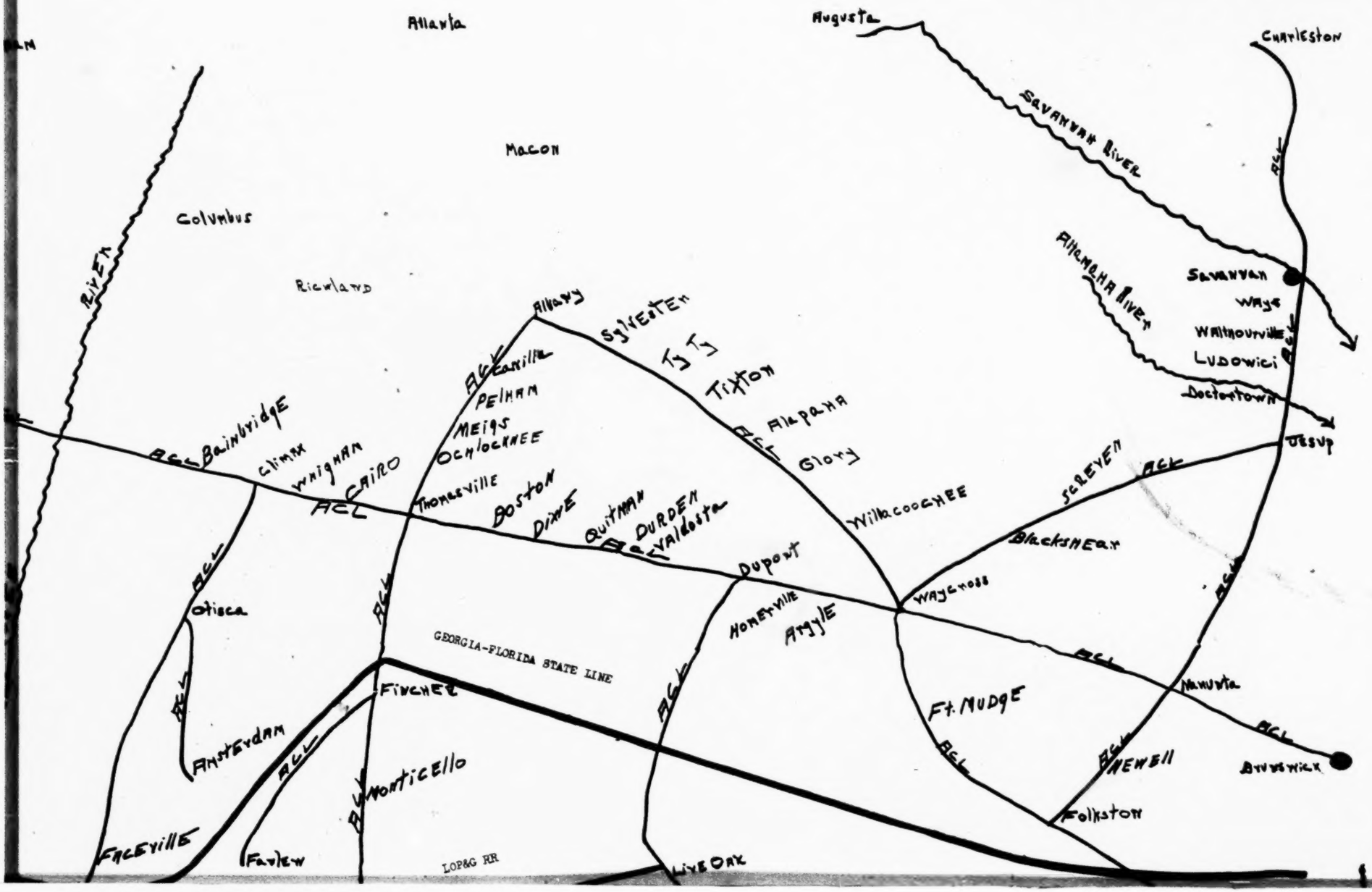
(Here follow Exhibit 38, map of A. C. L. R. R. lines in Georgia, side folio 447)

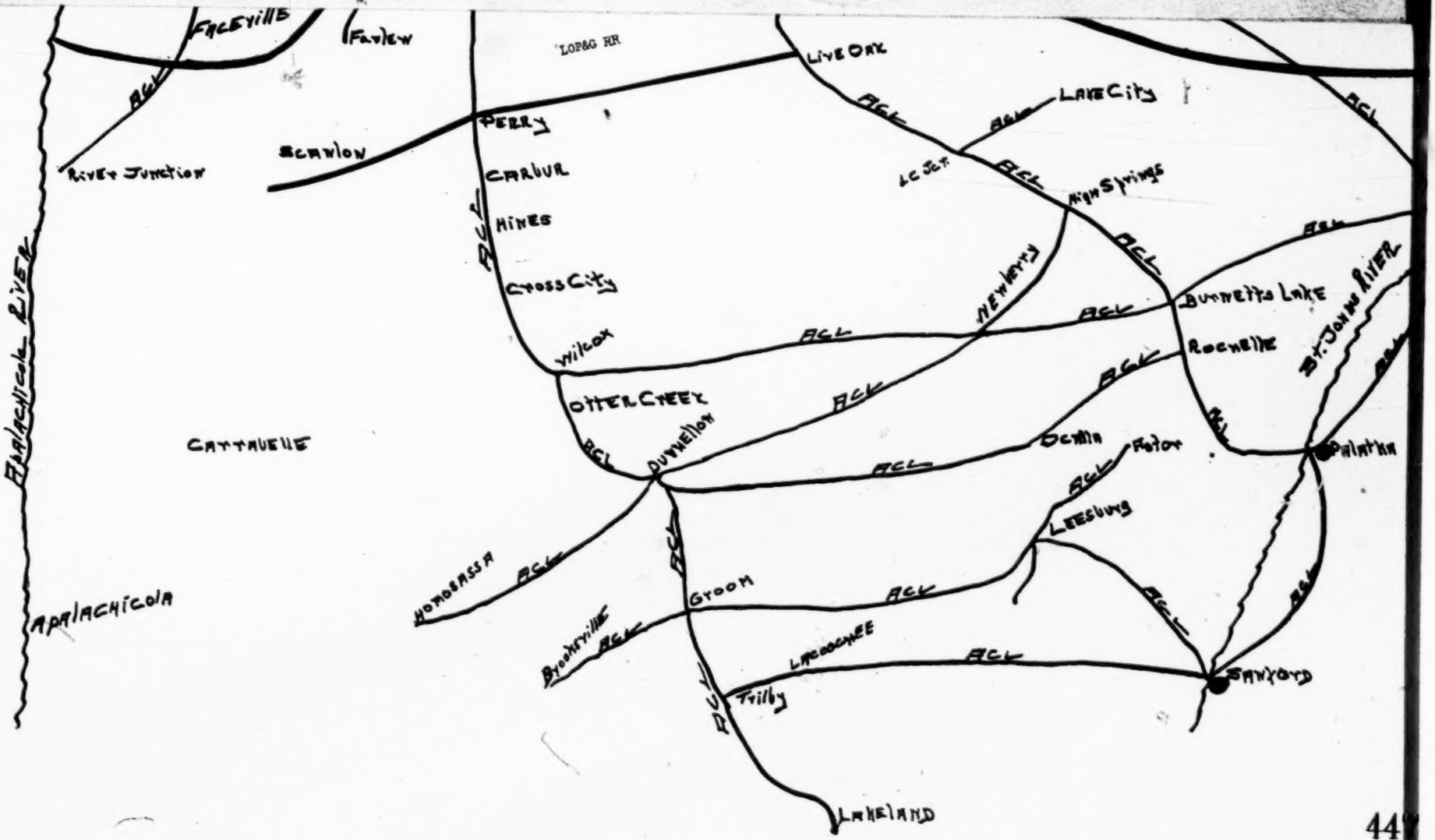
Map showin all lines of Atlantic Coast Line Railroad in Georgia with list of all stations thereon at which are located sawmills or planing mills and portion of lines of same Railroad in Florida



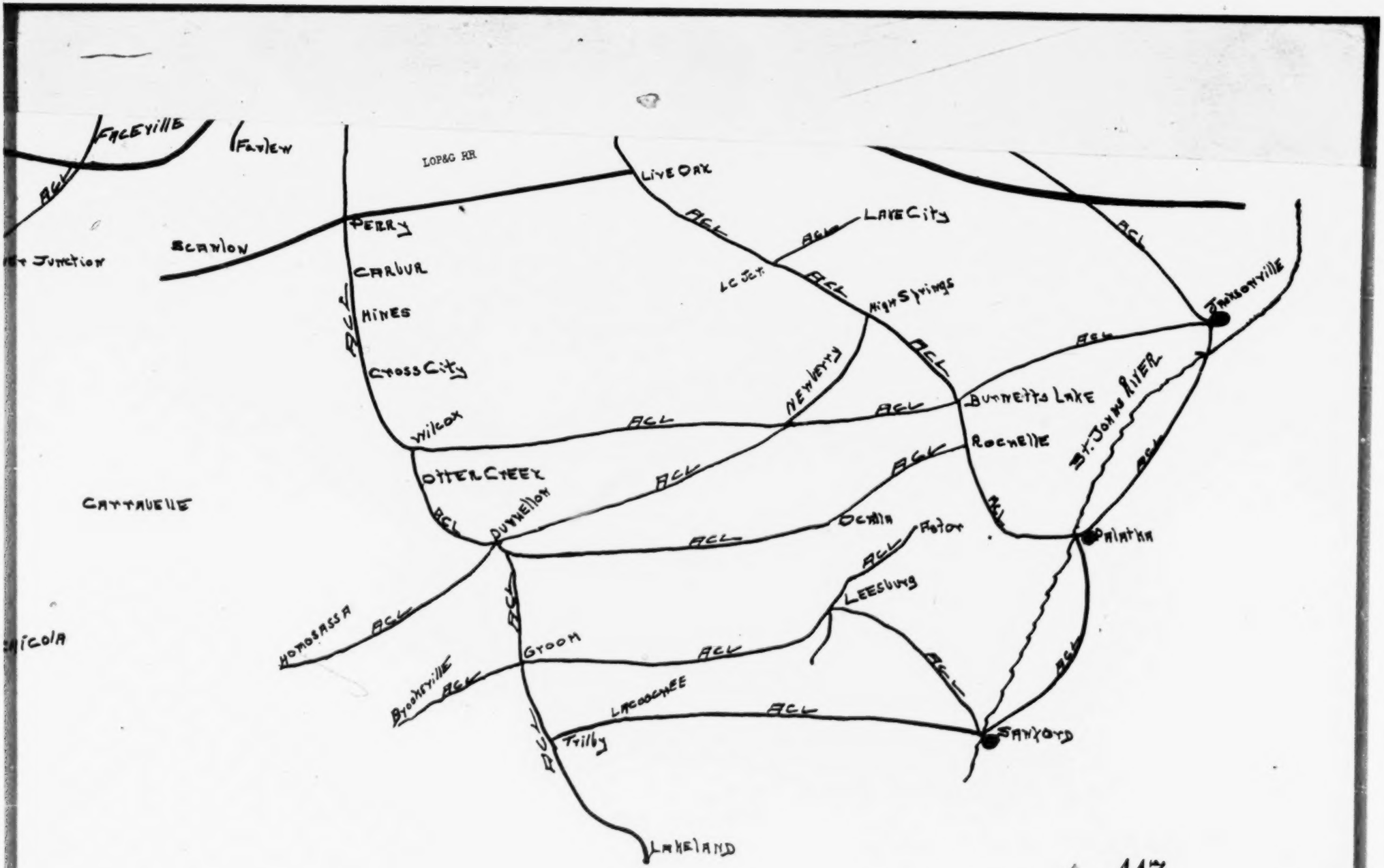
Map showing all lines of Atlantic Coast Line Railroad in Georgia with list of all stations thereon at which are located sawmills or planing mills and portion of lines of same Railroad in Florida

ICC Docket 18364
Exhibit 38
Witness





Faceville
Farlew
LOP&G RR
Live Oak
Lake City
ACL
Perry
Scanlon
River Junction
Carbur
Hines
Cross City
LC Jct
High Springs
Newberry
Burnetts Lake
Rochelle
St. Johns River
Wilcox
Otter Creek
Dunnellon
Ocala
Astor
Palatka
Leesburg
Carrabelle
Apalachicola River
Homosassa
Groom
Brooksville
Lacoochee
Trilby
Sanford
Apalachicola
Lakeland


FACEVILLE
Farlew
LOP&G RR
LIVE OAK
ACL
LAKE CITY
PERRY
SCANLON
Junction
CARBUR
LC JCT
HINES
High Springs
JACKSONVILLE
CROSS CITY
NEWBERRY
BURNETTS LAKE
ST. JOHNS RIVER
WILCOX
ROCHELLE
OTTER CREEK
CARRABELLE
DUNNELLON
OCALLA
PALATKA
ASTOR
LEESBURG
HOMOSASSA
GROOM
BROOKSVILLE
LACOOCHEE
SANFORD
TRILBY
LAKELAND

[fol. 448]

EXHIBIT No. 39

I. C. C. Docket 18364

Witness: Pettijohn

Page 1 of 4

Atlantic Coast Line Railroad Company

Statement showing the estimated cost of transporting a carload of logs from Perry to Eastport, Florida, during the month of September 1926, Costs Predicated upon Revised Exhibit No. 25

	Direct cost	Indirect percentage-cost		Total cost
A. Cost of Road Movement: Transportation —Road	$7,085.11	22.1168	$1,567.00	$8,652.11
B. Cost of Yard Handling: Maintenance of Equipment	152.52	12.3150	18.78	171.30
Transportation —Yard	682.00	45.1720	308.07	990.07
C. Cost of Depreciation: Locomotives. Maintenance of Equipment	184.56	12.3150	22.73	207.29
E. Cost of Maintenance: Locomotives. Maintenance of Equipment.	2,622.15	12.3150	322.92	2,945.07
G. Cost of Maintenance: Roadway, Maint. of Way & Structures	1,386.00	28.5101	395.15	1,781.15
	$12,112.34	.....	2,634.65	14,746.99

EXHIBIT No. 39—Continued

	Direct cost	Indirect percentage-cost		Total cost
Less Amount other traffic, 3.8%.....	460.27	.....	100.12	560.39
	$11,652.07	.....	2,534.53	14,186.60
C. Cost of Depreciation, Cars: Maintenance of Equipment	205.47	12.3150	25.30	230.77
H. Cost of Car Maintenance, Maintenance of Equipment..	1,723.00	12.3150	212.19	1,935.19
Total Operating Expenses ...$13,580.54		.....	$2,772.02	$16,352.56
Number cars loaded, 1,371.				
Average Expense per car	9.905	.....	2.022	11.9275
Average Reveune per car	.....	.....	.....	20.47
Operating Ratio..	.....	58.27	.....	
Average Expense per car	.....	.....	.....	11.93
F. Cost of car hire under contract (75 cars) $1,071.-82 divided by 1,371	.....	.....	.....	.78
I. Taxes.				1.49
Total Cost				$14.20

[fol. 449] EXHIBIT No. —

I. C. C. Docket 18364

Witness: Pettijohn

Page 2 of 4

Atlantic Coast Line Railroad Company

Statement Explaining the Differences in Direct Costs of Logs Trains as Reflected on Witness White's Exhibit No. 25 Revised and as Used by Witness Pettijohn

Item		Mr. White	Mr. Pettijohn	Decrease
A		$7,196.48	$7,085.11	$111.37
Wages paid aggregate $222.74 in excess of scheduled costs which amounts has been assigned one-half to log trains and one-half to other traffic	$111.37			
B		1,429.22	834.52	594.70
Reduction in time from six hours to four hours per day	$476.41			
Elimination of Interest	12.06			
Correction in cost per mile for locomotive repairs, 124 hours @ $20.56 per day	106.23			
C		572.02	184.56	387.46

Item		Mr. White	Mr.Pettijohn	Decrease
Elimination of Interest	381.35			
Adjusting Depreciation to 30 days instead of 1/12 of a year.	2.61			
Applying Train instead of Car mile percentage	3.50			
E.....		3,423.25	2,622.15	801.10
Decrease in repair cost per mile..	751.30			
Applying Train instead of Car mile percentage	49.80			
Add account decrease in Deduction account other traffic.....				*71.73
C		624.75	205.47	419.28
Elimination of Interest	416.50			
Adjusting to 30 days instead of 1/12 of a year.	2.78			
				$2,242.18

[fol. 450] EXHIBIT No.

I. C. C. Docket 18364

Page 3 of 4

Witness Pettijohn

Atlantic Coast Line Railroad Company

Statement Showing the Taxes Accrued During the Year Ended December 31, 1925, and the Apportionment of Taxes to a Car of Logs

#532—Railway Tax Accruals, Sch. 300 I, Page 301		6,600,000.00

Schedule 350—Page 312

Other than U. S. Government Taxes:		
Virginia	$163,700.24	
North Carolina	1,272,465.37	
South Carolina	921,730.60	
Georgia	546,605.69	
Florida	1,427,529.86	
Alabama	185,082.29	
Tennessee	150.00	
Massachusetts	13.35	
Missouri	2.57	
Ilinois	13.72	
Louisiana	6.43	
New York	26.80	
District of Columbia	34.00	
Kansas City	5.88	
Total		$4,517,366.80
U. S. Government Taxes		
Corporation Income	$1,949,456.93	
Capital Stock	131,542.00	
Tax on Telegrams	1,400.85	
Documentary Stamps	233.42	
Total		$2,082,633.20
Grand Total		$6,600,000.00

[fol. 451] EXHIBIT No.

I. C. C. Docket 18364

Page 4 of 4

Witness Pettijohn

	Total	Per cent	Taxes
Page 301, Sch. 300 I:			
Line 4, net revenue from railway operations	$29,031,576.35	.....	...
Page 312, Sch. 350:			
Line 30, Corporation Income Tax	1,949,456.93	6.715	...
6.715% of $8.54 (20.47-11.93)	.....	.....	.57
Page 707, Sch. 720:			
Line 247, Grand Total Railway Operating Expenses	$19,106,536.32	.....	...
Page 312, Sch. 350:			
Line 5—Florida	1,427,529.86	7.471	...
7.471% of 11.93=	.....	.....	.89
Average mileage of road operated:			
Page 508, Sch. 531, Line 1, System	4,890.49	.....	...
Page 904, Sch. 931, Line 1, Florida	1,843.85	37.703	...
U. S. Government Taxes other than Corporation Income Tax	133,176.27	.....	...
37.703% of 133,176.27=	50,211.45	.....	...
$50,211.45 is .2628% of $19,106,536.32			
.2628% of $11.93	.....	.....	.03
			$1.49

[fol. 452]

EXHIBIT No. 40

I. C. C. Docket 18364

Witness Pettijohn

Page 1 of 2

Statement Showing Percentage of Direct to Indirect Expenses by General Groups with the Transportation Group Subdivided as Between Road and Yard, January 1st, to August 31st, 1926

Maintenance of Way & Structures	$11,676.62	$47,279.35	$2,469.71
Maintenance of Equipment	6,884.21	78,619.38	850.20
Traffic Expenses	4,245.26	3,219.03	13,188.01
Transportation—Rail Line:			
Yard	8,443.38	28,650.07	2,947.07
Road	7,013.92	109,327.80	1,641.55
Common	16,403.25	.....	1,188.83
Total	54,666.64	267,095.63	.....
General Expenses	10,184.76	267,095.63	38.13
	$64,851.40	$267,095.63	$2,428.02

[fol. 453]

EXHIBIT No. 40

I. C. C. Docket 18364

Witness Pettijohn

Page 2 of 2

Item I-2, Exhibit No. 25

		Rail		Yard		Common
		Indirect	Direct	Indirect	Direct	Direct
371	Superintendence	.....	.....	.....	.....	$5,745.07
372	Dispatching Trs.	$2,802.52	.....	.....	.....	.....
373	Station Emplys.	.....	$29,409.11	.....	.....	.....
374	Weigh & Ins. & Dem.	.....	948.07	.....	.....	.....
376	Station Suppls.	.....	.....	.....	$12,479.58	.....
377	Ydmstrs. & Clks.	.....	2,184.41	.....	.....	.....
378	Yd. Condrs. & Bkm.	.....	.....	$7,587.09	.....	.....
379	Yd. Sw. & Sig. Tndrs.	.....	.....	180.00	.....	.....
380	Yd. Enginemen	.....	.....	.....	8,151.46	.....
382	Fuel Yard	.....	.....	.....	6,229.16	.....
385	Water Yard	.....	.....	249.65	.....	.....
386	Lubricants Yd.	.....	.....	.....	110.51	.....
387	Other Supplies	.....	.....	.....	133.14	.....
388	Eng. Hse. Equipt.	.....	.....	.....	1,998.66	.....
389	Yd. Sup. & Equip.	.....	.....	426.64	.....	.....
390	Oprg. Jt. Ter. Dr.	.....	.....	.....	1,108.53	.....

391	Termls. Cr.				1,560.97	
392	Train Enginemen		16,713.27			
394	Train Fuel		25,845.71			
397	Train Water		1,032.23			
398	Train Lubricants		567.40			
399	Train Other Supplies		492.38			
400	Train Eng. Hse. Equp.		4,539.03			
401	Trainmen		21,736.02			
402	Train Sup. & Equip.	2,568.93				
404	Signal & Intlks.	468.77				
405	Crossing Protecn.	500.72				
406	Dwbdg. Oper.		174.24			
407	Trl. & Til.	141.46				
408	Operg. Flt. Equip.		211.61			
410	Stationery & Print					1,400.14
411	Other Expenses					289.37
412	Oprg. Jt. Trks. Dr.		93.43			
413	Oprg. Jt. Trks. Cr.		875.97			
414	Insurance					498.44
415	Clearing Wrecks					1,591.69
416	Damage to Prop.					498.47
417	Damage to Stock	531.52				
418	Loss & Dam. Frt.		6,256.86			
420	Insurance to Persons					6,380.07
	Total	$7,013.92	$109,327.80	$8,443.38	$28,650.07	$16,403.25

454 EXHIBIT No. 41

I. C. C. Docket No. 18364

Statement of Uncut Timber of Brooks-Scanlon Corporation Available to Plant at Eastport, Florida, as of August 31st, 1926

In the Counties of Wakulla, Jefferson, Madison, Taylor, Lafayette, and Dixie, State of Florida

Township	Range	Cruiser's Pine	Estimate Cypress
2	3	14,330	8,318 M
4-S	2-E	15,139 M	.....
4	3	2,675	.....
2	4	71,085	24,210
3	4	115,645	7,212
4	4	20	155
5	4	9,930	350
1-N	5-E	30	.....
1-S	5-E	15	.....
2	5	23,250	.....
3	5	115,070	3,211
5	5	25,087	2,225
5	6	6,266	.....
6	6	2,734	.....
2-N	7-E	50	.....
3-N	7-E	70	.....
3-S	7-E	1,920	.....
5	7	28	.....
6	7	1,809	.....
7	7	1,128	.....
1	8	900	.....
2	8	15,470	4,765
3	8	8,895	2,435
4	8	21,970	2,555
5	8	29,545	.....
[fol. 455]			
1-S	9-E	3,390 M	.....
2	9	11,955	2,350 M
4	9	40,035	4,960
5	9	66,350	7,019

EXHIBIT No. 41—Continued

Township	Range	Cruiser's Pine	Estimate Cypress
6	9	2,085	.....
9	9	1,740	.....
10	9	15,445	.....
11	9	3,205	.....
2	10	8,070	725
3	10	3,280	200
4	10	2,160	10
5	10	35,490	5,000
6	10	94,063	.....
7	10	9,025	.....
8	10	21,108	.....
9	10	46,755	.....
10	10	51,075	275
11	10	8,000	240
12	10	6,830	.....
6	11	785	.....
9	11	2,010	.....
10	11	2,935	620
11	11	1,940	295
12	11	5,395	.....
10	12	7,740	.....
11	12	11,790	135
13	12	4,020	.....
9	13	195	.....
10	13	225	.....
10	14	10	.....
Totals		950,167 M	77,265 M

When logged the above pine and cypress (1,027,432 M) is equivalent to approximately 186,800 car-loads of logs. At the present pervailing average per car $3,922,800.00 will be paid in log freight to move the timber to the mills.

[fol. 456]

EXHIBIT No. 42

I. C. C. Docket No. 18364

Memorandum of Log Shipments and Freight Paid from Carbur and Scanlon to Eastport, Florida

Year	No. cars	Feet	Freight	Avg. freight per car	Avg. freight per M.	Avg. feet per car
1915	4,891	22,017,411	$62,920.00	$12.86	$2.85	501
1916	9,906	49,874,597	147,805.92	14.92	2.96	5,035
1917	9,352	52,618,696	140,555.56	15.03	2.67	5,626
1918	8,341	42,814,363	133,042.74	15.95	3.10	5,133
1919	7,900	37,630,140	131,423.04	16.63	3.66	4,763
1920	8,810	43,927,608	168,253.87	19.09	3.83	4,986
1921	7,580	39,854,303	173,801.53	22.85	4.37	5,256
1922	12,013	66,515,702	254,900.50	21.22	3.83	5,537
1923	12,613	69,142,154	254,481.24	20.17	3.68	5,482
1924	15,088	88,589,903	315,470.73	20.91	3.56	5,870
1925	16,017	93,305,603	331,549.71	20.70	3.55	5,825
1926	15,652	94,329,555	334,048.47	21.34	3.54	6,027
Totals	128,163	700,620,035	$2,448,253.31	$19.10	$3.49	5,467

[fol. 457] EXHIBIT No. 43

I. C. C. Docket No. 18364

Summary Property Investment of Brooks-Scanlon Corporation

	Dec. 31st, 1922	Additional investment	Aug. 31st, 1926
At Carbur, Fla.	$335,425.66	$72,410.85	$407,836.51
At Eastport, Fla.	1,320,932.03	916,994.88	2,237,926.91
At Scanlon, Fla.	.....	433,870.07	433,870.07
At Staten Island, N. Y.	320,000.00	1,580.49*	318,419.51
At Athena, Fla.	400.00	.....	400.00
Tug and Barges	.....	199,788.60	199,788.60
	$1,976,757.69	$1,621,483.91	$3,598,241.60

[fol. 458] Memorandum of Property Investment of Brooks-Scanlon Corporation at Eastport, Florida

	Dec. 31st, 1922	Additional investment	Aug. 31st, 1926
Saw Mill, Power House, Machinery	$366,131.17	$433,595.28	$799,726.45
Planing Mill, Power House & Mchy.	97,686.56	34,070.79	131,757.35
Dry Kilns	39,719.94	29,030.19	68,750.13
Dry Sorter & Cooling Shed	19,866.56	3,613.85	23,480.41
Lumber Storage Sheds	13,288.46	8,697.65	21,986.11
Lumber Yard	2,304.16	4,757.46	7,061.62
Mono-rail System	69,775.03	30,347.37	100,122.40
Terminal Railroad	63,062.61	6,447.67	69,540.28
Locomotives, Cars & Equipment.	13,659.63	9,797.35	23,456.98
Docks, Gantry, Cranes, Etc.	157,857.13	220.00	158,077.13
Boats, Lighters & Equipment	14,097.35	830.00	14,927.35
Electric Installation	11,424.36	920.51	12,344.87
Artesian Wells & Water Works.	19,821.83	7,114.93	26,936.76
Sanitary System	4,361.46	17,422.84	21,784.30
Live Stock, Wagons, Etc.	1,841.05	1,350.60*	490.45
Trucks & Autos	5,903.63	1,300.00	7,203.63
Hotel, Commissary & Sundry other building and their equipment	41,062.65	40,129.07	81,191.72
Sundry Machinery & Equipment.	6,612.58	284.70	6,897.28
Office Building & Equipment	12,803.57	4,262.34	17,065.91
White Houses	79,598.50	80,265.84	159,864.34
Negro Quarters	24,734.40	27,779.17	52,513.57
New Steel Log Cars	.....	155,862.80	155,862.80
Cline Turpentine Still	.....	21,565.67	21,565.67
Real Estate	255,319.40	.....	255,319.40
Totals	$1,320,932.03	$916,994.88	$2,237,926.91

[* Red in copy.]

Exhibit No. 43—Continued

[fol. 459] Memorandum of Property Investment of Brooks-Scanlon Corporation at Carbur, Florida

	Dec. 31st, 1922	Additional investment	Aug. 31st, 1926
Real Estate (½ interest) ...	$1,330.87	.....	$1,330.87
Main Line R. R. " ...	94,174.33	.....	94,174.33
Machine Shop & Equip. " ...	2,746.43	.....	2,746.43
Round House " ...	1,351.32	.....	1,351.32
Hotel, Boarding Houses, Commissary & Equip. " ...	7,675.18	.....	7,675.18
Sundry Buildings " ...	1,987.72	.....	1,987.72
Water Works " ...	6,848.69	.....	6,846.69
Electric Light Plant " ...	838.04	.....	838.04
Drainage System " ...	543.46	.....	543.46
White Houses	14,517.16	$13,114.08	27,661.24
Negro Quarters	9,538.65	2,522.20	12,060.85
Convict Stockade	2,377.18	.....	2,377.18
Sundry Buildings	1,344.27	525.28	1,869.55
Stable	1,775.73	.....	1,775.73
Live Stock	17,178.73	.....	17,178.73
Wagons, Carts, etc.	4,746.54	.....	4,746.54
Autos & Motor Cars	2,287.11	.....	2,287.11
Rail	14,361.92	50,323.43	64,685.35
R. R. Cars & Equipment	8,985.65	.....	8,985.65
Portable Houses, Camp Cars and Equipment	7,946.35	.....	7,946.35
Round House, Shop & Equipment	12,793.10	2,410.28*	10,382.82
Locomotives	42,888.57	5,625.56*	37,263.01
Skidders	38,758.76	.....	38,758.76
Loaders	20,236.44	.....	20,236.44
Ohio Cranes	13,751.03	.....	13,751.03
Drag Line Cranes	.....	13,931.70	13,931.70
Track Laying Machine	4,444.43	.....	4,444.43
Totals	$335,425.66	$72,410.85	$407,836.51

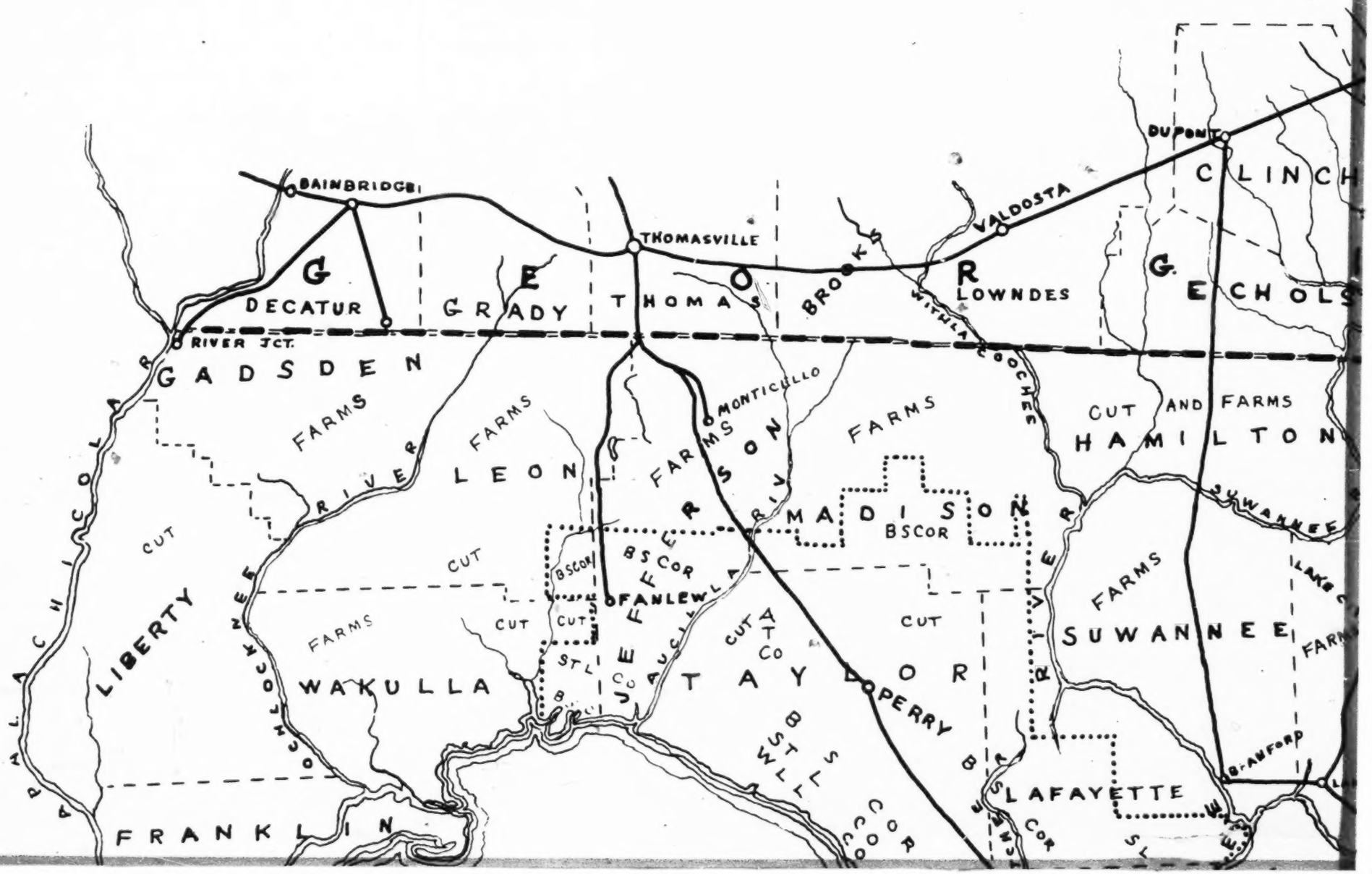
[fol. 460] Memorandum of Property Investment of Brooks-Scanlon Corporation at Scanlon, Florida

Note—There was no investment at this place, as of Dec. 31st, 1922, and the following items shown as of August 31st, 1926, are all new or additional investment.

	Aug. 31, 1926
Buildings, including Furniture & Fixtures in Hotel, Commissary, Post Office, etc.	$61,757.20
Rail	76,879.68
R. R. Cars & Equipment	8,459.90
Main Line R. R.	81,517.33
Locomotives	78,374.99
Autos & Motor Cars	1,435.23
Live Stock	16,753.43
Wagons, Carts & Harness	2,759.61
Skidders	28,701.45

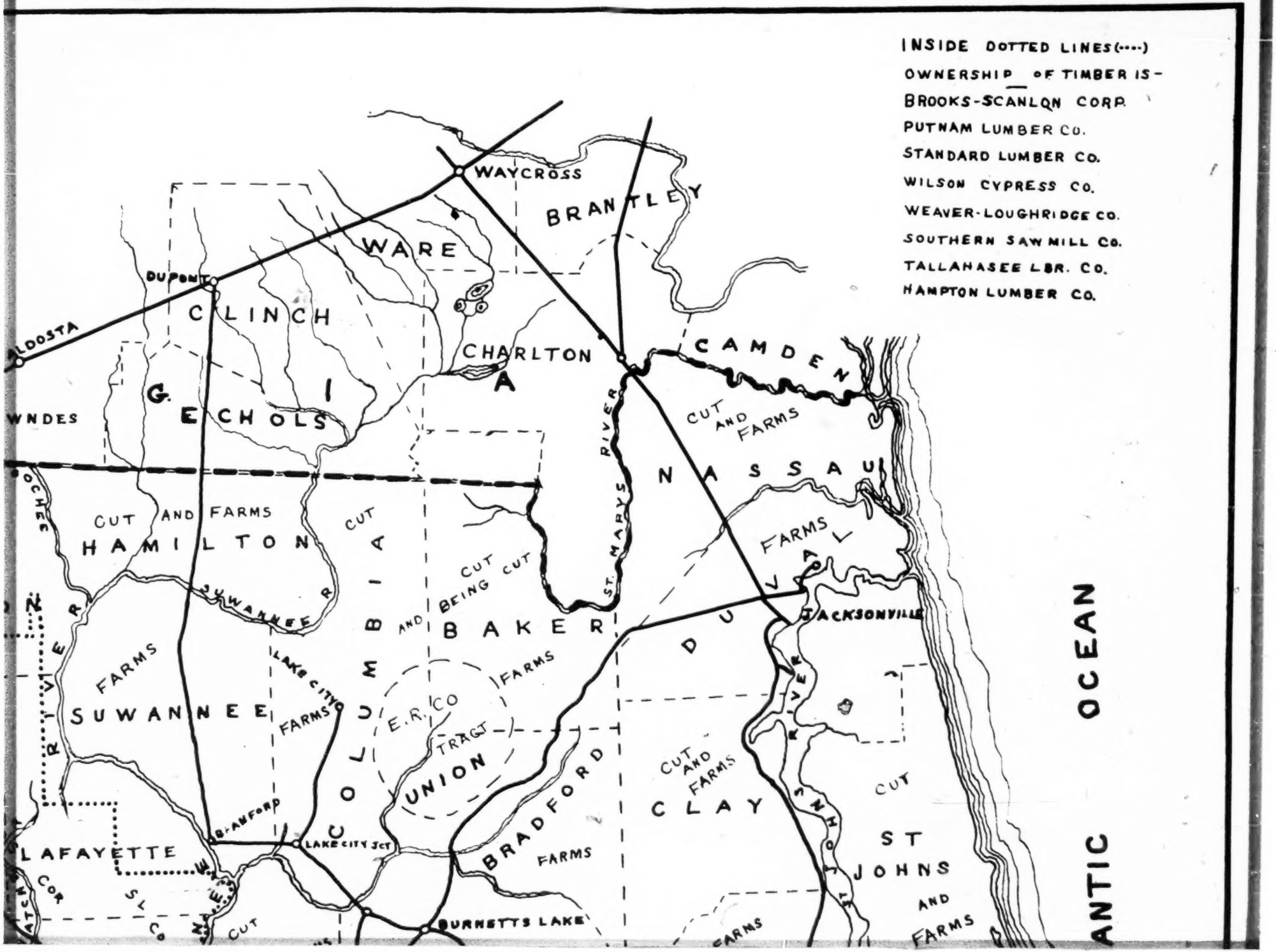
[* Red in copy.]

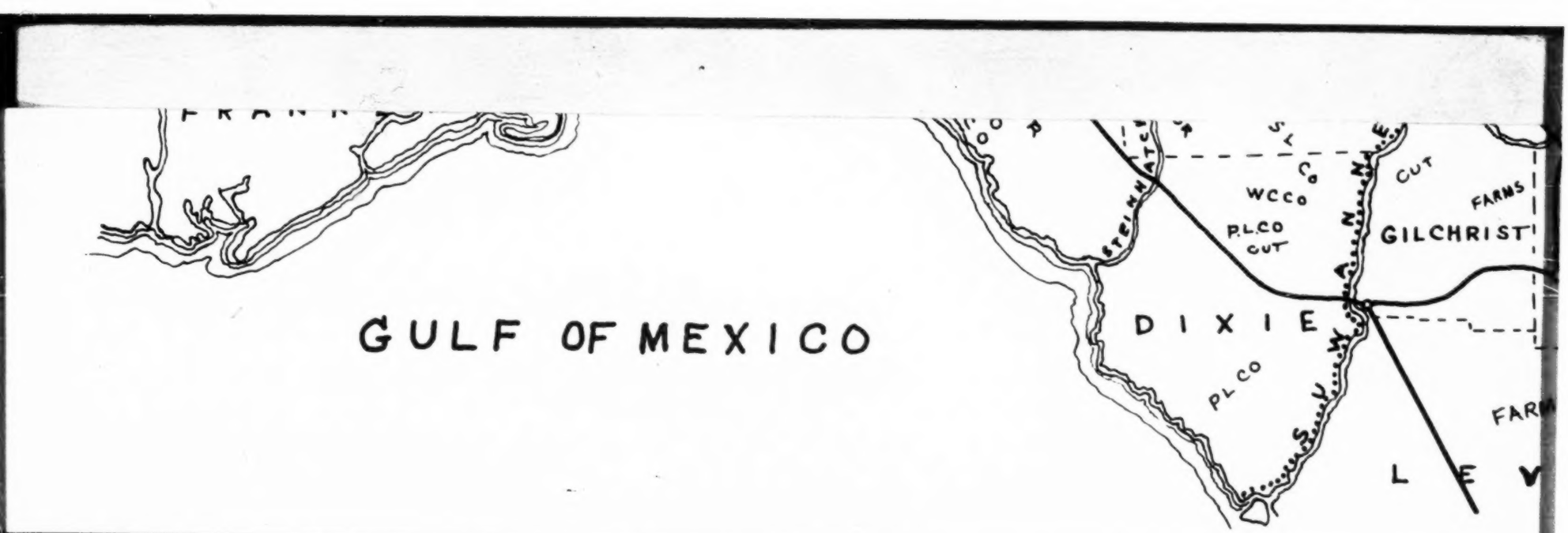
EXHIBIT 44

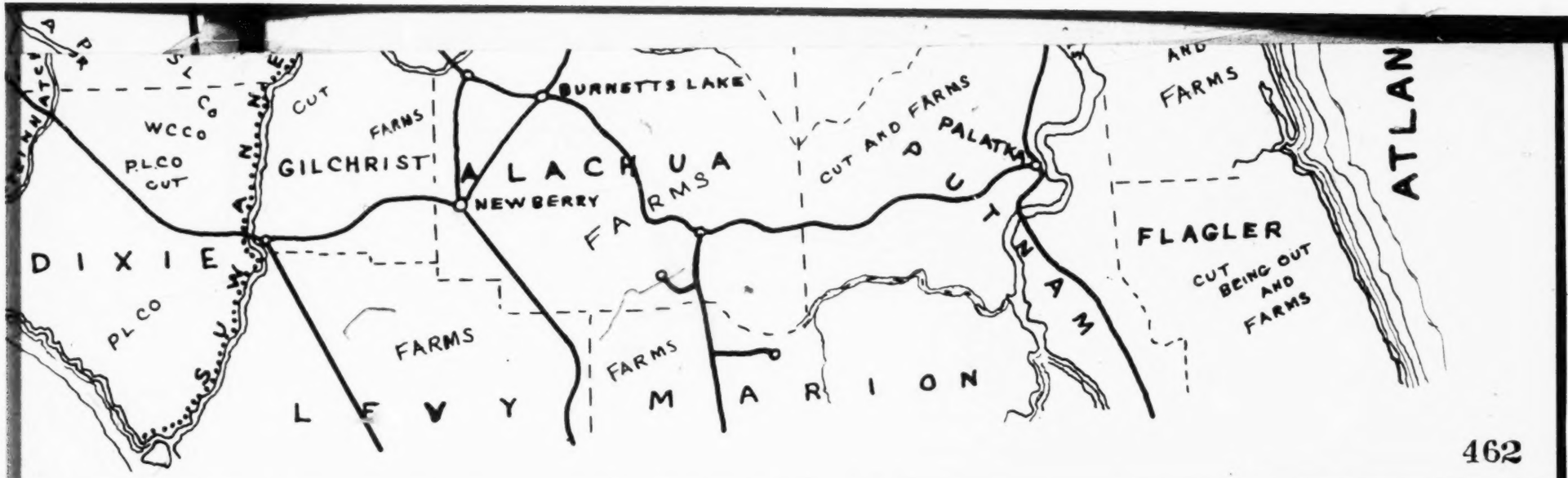


BAINBRIDGE
THOMASVILLE
VALDOSTA
DUPONT
CLINCH
G E O R G E
DECATUR
GRADY
THOMAS
BROOKS
LOWNDES
ECHOLS
RIVER JCT.
GADSDEN
MONTICELLO
FARMS
LEON
JEFFERSON
MADISON
HAMILTON
CUT AND FARMS
SUWANNEE
LIBERTY
WAKULLA
FANLEW
TAYLOR
PERRY
LAFAYETTE
FRANKLIN
APALACHICOLA R
OCHLOCKNEE RIVER
AUCILLA RIV
WITHLACOOCHEE
BSCOR
CUT
BRANFORD

EXHIBIT 44


INSIDE DOTTED LINES(····)
OWNERSHIP OF TIMBER IS-
BROOKS-SCANLON CORP.
PUTNAM LUMBER CO.
STANDARD LUMBER CO.
WILSON CYPRESS CO.
WEAVER-LOUGHRIDGE CO.
SOUTHERN SAW MILL CO.
TALLAHASEE LBR. CO.
HAMPTON LUMBER CO.
WAYCROSS
BRANTLEY
WARE
DUPONT
CLINCH
LOOSTA
CHARLTON
CAMDEN
ECHOLS
WNDES
CUT AND FARMS
NASSAU
OCHEE
CUT AND FARMS
HAMILTON
CUT
ST. MARYS RIVER
FARMS
SUWANNEE R
CUT AND BEING CUT
COLUMBIA
BAKER
DUVAL
JACKSONVILLE
FARMS
SUWANNEE
LAKE CITY FARMS
E.R. CO TRACT
FARMS
UNION
BRADFORD
CUT AND FARMS
CLAY
ST JOHNS RIVER
CUT
ST JOHNS
AND FARMS
LAFAYETTE
BRANFORD
LAKE CITY JCT
FARMS
BURNETTS LAKE
CUT
FARMS
OCEAN


GULF OF MEXICO
WCCO
P.L.CO CUT
CUT
FARMS
GILCHRIST
DIXIE
PL CO



L.C. Crockett - Jan 27.

EXHIBIT No. 43—Continued

	Dec. 31st, 1922	Additional investment	Aug. 31st, 1926
Loaders			14,446.01
Ohio Crane			12,823.49
Drag Line Cranes			23,617.06
Track Laying Machine			5,535.07
Miscellaneous Machinery & Equipment			4,112.72
Shop Machinery & Equipment			13,828.25
Perry Buildings & Real Estate			3,050.65
Total			$433,870.07

[fol. 461] Memorandum of Property Investment of Brooks-Scanlon Corporation at Staten Island, N. Y.

	Dec. 31st, 1922	Additional investment	Aug. 31st, 1926
Real Estate	$127,531.28	.....	$127,531.28
Docks, Gantry, Cranes, Etc.	177,812.24	1,335.19*	176,477.05
Lumber Storage Sheds	9,359.10	.....	9,359.10
Electric Installation	3,188.88	.....	3,188.88
Office Building & Equipment	2,108.50	245.30*	1,863.20
	$320,000.00	.....	$318,419.51

(Here follows Exhibit 44—map, side folio page 462)

[* Red in copy.]

[fol. 463]

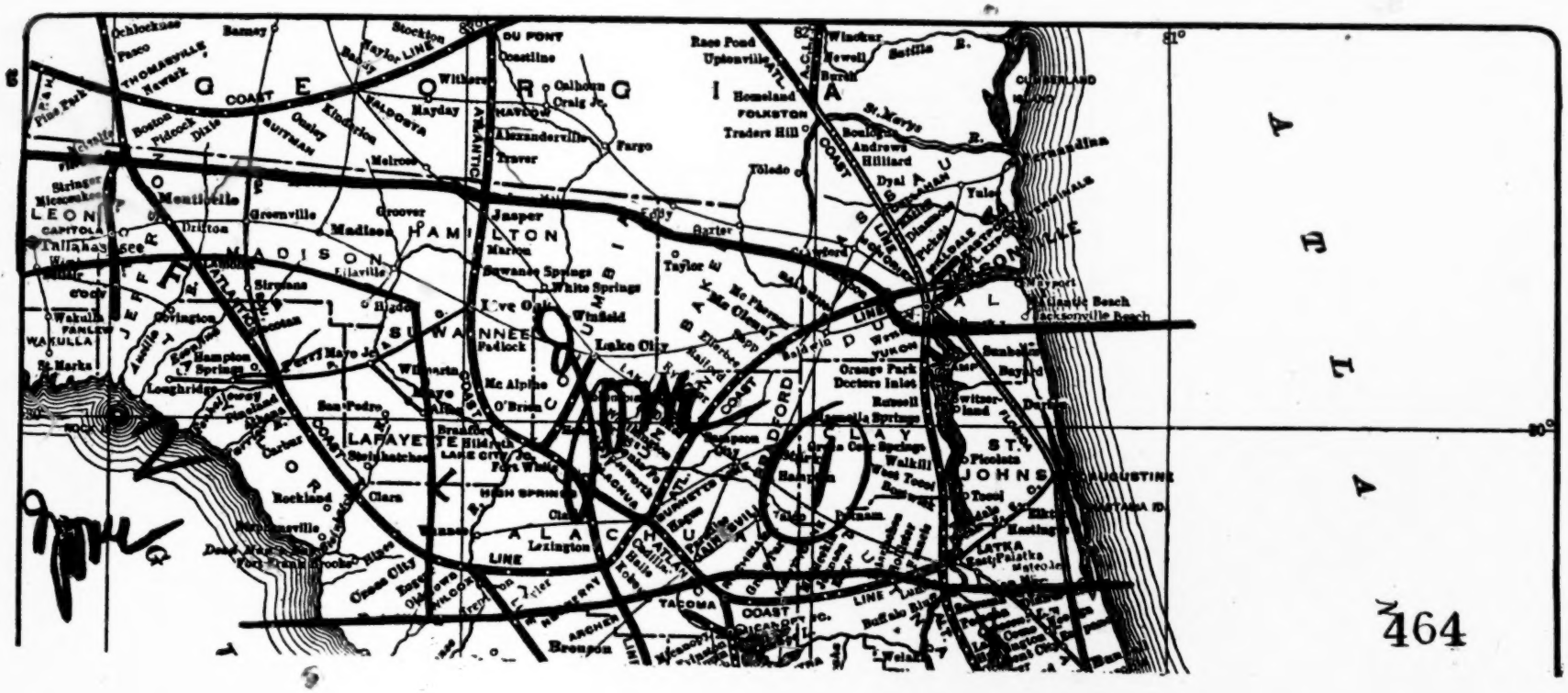
EXHIBIT 45

I. C. C. Docket 18364

Witness: Green

Statement Showing Rates, in Cents, per Hundred Pounds, on Lumber, Carload, from Points in Georgia to Eastern Cities, Interior Eastern and New England Points as Compared with Rates to Same Destinations from Points in Florida Located in Zones 1 and 2

To	From								
	Bainbridge, Ga.	Quitman, Ga.	Thomasville, Ga.	Valdosta, Ga.	Waycross, Ga.	Florida Zone 1 Live Oak, Fla., Palatka, Fla., over Ga. For geographical boundaries of Zones see map attached		Florida Zone 2 Carbur, Fla., Hines, Fla., Perry, Fla., Scanlon, Fla., over Ga. For geographical boundaries of Zones see map attached	
Portland, Me	45	45	45	45	45	46	1	47	2
Boston, Mass	45	45	45	45	45	46	1	47	2
Hartford, Conn	43	43	43	43	43	44	1	45	2
New York, N. Y	41½	41½	41½	41½	41½	42½	1	43½	2
Philadelphia, Pa	36	36	36	36	36	37	1	38	2
Baltimore, Md	35	35	35	35	35	36	1	37	2
Albany, N. Y	43	43	43	43	43	44	1	45	2
Buffalo, N. Y	45	45	45	45	45	46	1	47	2


GEORGIA
FLORIDA
Ochlocknee
Pasco
Barney
Stockton
Taylor LINE
DU PONT
Coastline
Race Pond
Uptonville
Windsor
Newell
Estilla
Burnt
Withers
Calhoun
Craig Jct.
Homeland
FOLKSTON
Traders Hill
Mayday
Kingston
Waldowa
Alexanderville
Fargo
Traver
Melrose
Toledo
St. Marys
Boulogne
Andrews
Hilliard
Dyal
Yulee
Fernandina
Stringer
Miccosukee
Monticello
Greenville
Groover
Madison
Jasper
Marion
Suwanee Springs
White Springs
Live Oak
Winfield
Lake City
Taylor
Barrier
Eddy
Tallahassee
Drifton
Lillaville
Sirmans
Blades
Wakulla
Perry
Mayo Jct.
Hampton Springs
Longbridge
San Pedro
Bronson
Rocklend
Clara
Lexington
Orange City
Osteen
Deland
Fort Frank Brooks
Pedlock
McAlpine
O'Brien
Branford
Lake City Jct.
Fort White
High Springs
Orange Park
Doctors Inlet
Russell
Green Cove Springs
Walkill
Tocoi
Hastings
LATKA
East Palatka
Interlachen
Jacksonville Beach
Atlantic Beach
Jacksonville
Buffalo Bluff
Yulee
Bryceville
Baldwin
Tacoma
Coast
Chicora
Welaka
JEFFERSON
MADISON
LAFAYETTE
SUWANNEE
BAKER
DUVAL
CLAY
ST. JOHNS
ALACHUA
LEON
WAKULLA
COAST LINE
ATLANTIC COAST LINE
SEABOARD
ATLANTIC
GULF
FLORIDA EAST COAST
ST. AUGUSTINE
82°
30°

464

Syracuse, N. Y.	45	45	45	45	45	46	1	47	2
Wilkes Barre, Pa.	41½	41½	41½	41½	41½	42½	1	43½	2
Williamsport, Pa.	41½	41½	41½	41½	41½	42½	1	43½	2
Harrisburg, Pa.	36	36	36	36	36	37	1	38	2

Tariff Authority: Agt. J. H. Glenn's I. C. C. No. A-541.

Jacksonville, Fla., January 18, 1927.

25—493-4-5

(Here follows map, side folio page 464)

[fol. 465] EXHIBIT No. 46

I. C. C. Docket 18364

Witness: E. M. Price

Statement of Rates on Logs from Florida Points to Climax, Ga., Compared with Rates from Florida Points to Florida Manufacturing Points and Showing Discrimination Against Climax, Ga.

Rates, in Cents, per Car 50,000 Pounds

From	To	Distance	Rate	Discrimination against Climax, Ga.
Fincher, Fla.	Climax, Ga.	40	$22.50	.....
Godwins & Harrell, Fla.	Jacksonville, Fla.	39	8.55	$13.95
Stringer, Fla.	Climax, Ga.	43	25.00	.....
Forrester, Fla.	Climax, Ga.	43	25.00	.....
Alma, Fla.	Climax, Ga.	46	25.00	.....
Bryants Still, Fla.	Climax, Ga.	47	25.00	.....
Miccosukee, Fla.	Climax, Ga.	48	25.00	.....
Johnstown, Fla.	Jacksonville, Fla.	49	10.50	14.50
Brice, Fla.	Climax, Ga.	51	27.50	.....
Monticello, Fla.	Climax, Ga.	52	27.50	.....
Wadesboro, Fla.	Climax, Ga.	54	27.50	.....
Capitola, Fla.	Climax, Ga.	59	27.50	.....
Dukes, Fla.	Jacksonville, Fla.	59	10.50	17.00
Cody, Fla.	Climax, Ga.	65	30.00	.....
Haynesworth, Fla.	Jacksonville, Fla.	69	11.50	18.50
Jasper, Fla.	Climax, Ga.	130	42.50	.....
Jasper, Fla.	Jacksonville, Fla.	142	17.00	25.50
Bakers Mill, Fla.	Climax, Ga.	126	42.50	.....
Bakers Mill, Fla.	Jacksonville, Fla.	138	17.00	25.50
Marion, Fla.	Climax, Ga.	136	42.50	.....
Marion, Fla.	Jacksonville, Fla.	139	17.00	25.50
Suwanee, Fla.	Climax, Ga.	139	42.50	.....
Suwanee, Fla.	Jacksonville, Fla.	135	17.00	25.50
Rixsford, Fla.	Climax, Ga.	142	45.00	.....
Paddock, Fla.	Climax, Ga.	151	45.00	.....
McAlpin, Fla.	Climax, Ga.	157	45.00	.....
Pineland, Fla.	Jacksonville, Fla.	156	17.00	28.00
O'Brien, Fla.	Climax, Ga.	164	47.50	.....
Branford, Fla.	Climax, Ga.	170	47.50	.....
Croom, Fla.	Jacksonville, Fla.	169	18.50	29.00

Authority:

A. C. L. Ry. G. F. O. 116 I. C. C. B 2255, Sup. 29.

A. C. L. Ry. I. C. C. B 2141.

J. H. Glenn's I. C. C. A 415, Sup. 27 (A. C. L. G. F. O. 253).

[fol. 466] EXHIBIT No. 47

I. C. C. Docket 18364

Witness: E. M. Price

Statement of Rates on Logs Intrastate in North Carolina Compared with Rates Proposed by A. C. L. Ry.

Rates, in Cents, per Hundred Pounds

Distance	North Carolina, min. car 40,000 lbs.	Proposed by A. C. L. Ry., min. car 40,000 lbs.
12 miles	1.8	3
14 "	1.8	3
22 "	2.13	3.5
24 "	2.13	3.5
32 "	2.62	4
34 "	2.62	4
42 "	2.87	4.5
44 "	2.87	4.5
52 "	3.25	4.5
54 "	3.25	4.5
62 "	3.5	5
64 "	3.5	5
72 "	4	5.5
74 "	4	5.5
82 "	4.25	5.5
84 "	4.25	5.5
92 "	4.62	6
94 "	4.62	6
100 "	5	6
110 "	5.37	6.5
120 "	5.62	6.5
130 "	6.12	7
140 "	6.25	7
150 "	6.75	7.5
160 "	7.12	7.5
170 "	7.37	8

Authority:

A. C. L. Ry. I. C. C. B 2091 (Sup. 13).
Witness Perrin's Exhibit No. 24.

[fol. 467] EXHIBIT No. 48

I. C. C. Docket 18364

Witness: E. M. Price

Statement of Rates on Logs Between Points in North Carolina Compared with Rates Proposed by A. C. L. Ry. for Same Distance

Rates, in Cents, per Hundred Pounds

	Distance, miles	North Carolina rate (note)	Proposed by A. C. L. Ry.
Walter to Goldsboro	6	1.77	2.5
Hallifax to Weldon	7.6	1.77	2.5
Dudley to Goldsboro	8.1	1.77	2.5
Grassmere to Goldsboro	8.7	1.77	2.5
Ruggles to Weldon	11.3	2.06	3
Delmar to Weldon	12.9	2.06	3
Griffins to Goldsboro	13.5	2.06	3
Maco to Wilmington	13.7	2.06	3
Rocky Point to Wilmington	14.3	2.06	3
Ravenwood to Newbern	15.9	2.06	3
Tillery to Weldon	16.4	2.06	3
Hawaco to Weldon	16.8	2.06	3
Enfield to Weldon	18.6	2.06	3
Faison to Goldsboro	20.1	2.06	3.5
Spring Hill to Weldon	20.6	2.35	3.5
Bricks to Weldon	21.7	2.35	3.5
Kitchins to Weldon	22.4	2.35	3.5
Burgaw to Wilmington	22.6	2.35	3.5
Belgrade to Newbern	22.7	2.35	3.5
Whitaker to Weldon	24.6	2.35	3.5
Goldsboro to Wilson	24.8	2.35	3.5
Deppe to Newbern	26.2	2.35	3.5
Scotland Neck to Weldon	26.8	2.35	3.5
Battleboro to Weldon	28.8	2.35	3.5
Bolton to Wilmington	29.1	2.35	3.5
Watha to Wilmington	29.5	2.35	3.5
Aberly to Newbern	29.9	2.35	3.5
Arringtons to Weldon	31.3	2.46	4
Willard to Wilmington	32.7	2.46	4

	Distance, miles	North Carolina rate (note)	Proposed by A. C. L. Ry.
Carr to Goldsboro.....	32.9	2.46	4
Hobgood to Weldon.....	33.7	2.46	4
Wallace to Wilmington...	35.9	2.46	4
Kerr to Wilmington.....	36.7	2.46	4
Hawkside to Newbern....	34.4	2.46	4
Hallsboro to Wilmington.	40.5	2.58	4.5
Willard to Goldsboro....	50.9	2.7	4.5
Chadbourn to Wilmington	53.5	2.7	4.5
Hollyridge to Newbern...	56.7	2.7	5
Edgecombe to Newbern..	60.2	2.7	5
Woolvins to Newbern....	62.9	2.81	5
Mt. Taboro to Wilmington	67.2	3.06	5
Hope Mills to Wilson....	80.9	3.06	5.5
Freeman to Goldsboro...	106.1	4.1	6.5
Wilmington to Wilson....	108.4	4.1	6.5
Wananish to Goldsboro...	118.3	4.1	6.5
Hallsboro to Goldsboro...	124.1	4.1	7
Flynns Sdg. to Goldsboro.	126.6	4.1	7

Authority:

A. C. L. Ry. I. C. C. 2248 G. F. O. 297.
Witness Perrin's Exhibit No. 24.

NOTE.—Rates apply on Sawmill Logs (except walnut, cherry and cedar) when loaded on standard flat cars, car load minimum 3,500 feet. Rates converted to cents per hundred pounds based upon estimated weight of 12,000 lbs. per 1,000 feet.

[fol. 468] EXHIBIT No. 49

I. C. C. Docket 18364

Witness: E. M. Price

Statement of Rates on Logs Intrastate in South Carolina Compared with Rates Proposed by A. C. L. Ry.

Rates, in Cents, per Hundred Pounds

Distances	S. C. Intrastate, min. 24,000 lbs.	Proposed by A. C. L. Ry., min. 40,000 lbs.
5 miles	2.4	2.5
10 "	2.85	2.5
15 "	3.5	3
20 "	3.83	3
25 "	3.83	3.5
30 "	4.33	3.5
35 "	4.5	4
40 "	4.66	4
45 "	5	4.5
50 "	5.33	4.5
55 "	5.33	4.5
60 "	5.33	5
65 "	5.33	5
70 "	5.66	5
75 "	5.83	5.5
80 "	5.83	5.5
85 "	6	5.5
90 "	6	6
95 "	6.16	6
100 "	6.16	6
110 "	6.5	6.5
120 "	6.66	6.5
130 "	6.66	7
140 "	6.83	7
150 "	6.83	7.5
160 "	7.16	7.5
170 "	7.16	8

Authority:

A. C. L. Ry. I. C. C. B. 2093.
Witness Perrin's Exhibit No. 24.

[fol. 469] EXHIBIT No. 50

I. C. C. Docket 18364

Witness: E. M. Price

Statement of Rates on Logs Applying Joint Between Stations on A. C. L. Ry. in South Carolina East of Augusta and Stations on C. &. W. C. Ry. East of Augusta when Short Line Mileage is via Robbins and Yemassee, S. C., Compared with Rates Proposed by A. C. L. Ry.

Rates, in Cents, per Hundred Pounds

Distance	A. C. L., C. & W. C. (note), min. 24,000 lbs.	Proposed by A. C. L. Ry., min. 40,000 lbs.
5 miles	2.4	2.5
10 "	2.85	2.5
15 "	3.5	3
20 "	3.83	3
25 "	3.83	3.5
30 "	4.33	3.5
35 "	4.5	4
40 "	4.66	4
45 "	5	4.5
50 "	5.33	4.5
55 "	5.33	4.5
60 "	5.33	5
65 "	5.33	5
70 "	5.66	5
75 "	5.83	5.5
80 "	5.83	5.5
85 "	6	5.5
90 "	6	6
95 "	6.16	6
100 "	6.16	6
110 "	6.5	6.5
120 "	6.66	6.5
130 "	6.66	7
140 "	6.83	7
150 "	6.83	7.5
160 "	7.16	7.5
170 "	7.16	8

Authority:

A. C. L. Ry. G. F. O. 26 I. C. C. B 2445.
Witness Perrin's Exhibit No. 24.

NOTE.—Rates subject to 20% deduction when used in constructing Combination rates.

[fol. 470]

EXHIBIT No. 51

I. C. C. Docket 18364

Witness: E. M. Price

Rates on Logs Intrastate in Georgia Compared with Rates Proposed by A. C. L. Ry for Interstate Florida to Georgia

Rates, in Cents, per Hundred Pounds

Distances	Georgia, min. car 40,000 lbs.	Proposed by A. C. L. Ry., min. 40,000 lbs.
5 miles	1.83	2.5
10 "	2.11	2.5
15 "	2.5	3
20 "	2.62	3
25 "	2.88	3.5
30 "	3	3.5
35 "	3.25	4
40 "	3.37	4
45 "	3.5	4.5
50 "	3.5	4.5
55 "	3.62	4.5
60 "	4	5
65 "	4.12	5
70 "	4.25	5
75 "	4.37	5.5
80 "	4.62	5.5
85 "	4.75	5.5
90 "	4.87	6
95 "	5.12	6

Distances	Georgia, min. car 40,000 lbs.	Proposed by A. C. L. Ry., min. 40,000 lbs.
100 "	5.37	6
110 "	5.5	6.5
120 "	5.62	6.5
130 "	5.75	7
140 "	6	7
150 "	6.25	7.5
160 "	6.37	7.5
170 "	6.5	8

Authority:

Proposed Rates: Witness Perrin's Exhibit No. 24.

Georgia Rates: Maximum Rates Georgia Public Service Commission.

B-2092.

[fol. 471]

EXHIBIT No. 52

Docket 18364

Witness: E. M. Price

Statement Showing Rates on Logs Interstate and Intrastate in North Carolina, South Carolina, Georgia, Florida and Alabama and Average of Interstate and Intrastate Rates Compared with Rates Proposed by A. C. L. Ry. Co.

Rates, in Cents, per Hundred Pounds

Distance	N. C. A	N. C. B	S. C. C	Ga. D	Fla. E	Ala. F	Interstate G	Average inter. & intrastate H	Average intrastate I	Proposed by A. C. L. Ry. J
5 miles	1.8	1.77	2.4	1.83	1.71	2.5	2.5	2.07	2	2.5
10 "	1.8	2.06	2.85	2.11	1.71	2.5	3	2.29	2.17	2.5
15 "	2.13	2.06	3.5	2.5	1.71	3	3.5	2.63	2.48	3
20 "	2.13	2.06	3.83	2.62	1.71	3	3.5	2.69	2.56	3
25 "	2.13	2.35	3.83	2.88	1.71	3.5	4	2.91	2.73	3.5
30 "	2.62	2.46	4.33	3	1.71	3.5	4	3.09	2.93	3.5
35 "	2.87	2.46	4.5	3.25	1.71	4	4.5	3.37	3.13	4
40 "	2.87	2.58	4.66	3.37	1.71	4	4.5	3.38	3.2	4
45 "	3.25	2.7	5	3.5	2.1	4.5	5	3.72	3.5	4.5
50 "	3.25	2.7	5.33	3.5	2.1	4.5	5	3.77	3.56	4.5
55 "	3.5	2.7	5.33	3.62	2.1	4.5	5.5	3.88	3.62	4.5
60 "	3.5	2.7	5.33	4	2.1	5	5.5	4.02	3.77	5
65 "	4	3.06	5.33	4.12	2.3	5	6	4.26	3.97	5
70 "	4	3.06	5.66	4.25	2.3	5	6	4.32	4.04	5

75	"	4.25	3.06	5.83	4.37	2.3	5.5	6.5	4.54	4.22	5.5
80	"	4.25	...	5.83	4.62	2.3	5.5	6.5	4.83	4.5	5.5
85	"	4.62	...	6	4.75	2.3	5.5	7	5.03	4.63	5.5
90	"	4.62	...	6	4.87	2.3	6	7	5.11	4.76	6
95	"	5	...	6.16	5.12	2.6	6	7	5.31	4.97	6
100	"	5	...	6.16	5.37	2.6	6	7	5.35	5.03	6
110	"	5.37	4.1	6.5	5.5	2.8	6.5	7.5	5.47	5.13	6.5
120	"	5.62	4.1	6.66	5.62	3.2	6.5	8	5.67	5.28	6.5
130	"	6.12	4.1	6.66	5.75	3.2	7	8.5	5.9	5.47	7
140	"	6.25	...	6.83	6	3.4	7	8.5	6.33	5.89	7
150	"	6.75	...	6.83	6.25	3.4	7.5	9	6.62	6.14	7.5
160	"	7.12	...	7.16	6.37	3.4	7.5	9	6.76	6.31	7.5
170	"	7.37	...	7.16	6.5	3.7	8	9.5	7.04	6.55	8

Authority:

A—Applies Intrastate in North Carolina A. C. L. Ry. I. C. C. B 2091.
B—Applies Intrastate in North Carolina A. C. L. Ry. I. C. C. B 2248.
C—Applies Intrastate in South Carolina A. C. L. Ry. I. C. C. B 2093.
D—Applies Intrastate in Georgia A. C. L. Ry. I. C. C. B 2092.
E—Applies Intrastate in Florida A. C. L. Ry. I. C. C. B 2255.
F—Applies Intrastate in Alabama Witness Perrins Exhibit 24.
G—Applies Interstate Witness Perrins Exhibit 17.
H—Average of Inter and Intrastate Rates.
I—Average of Intrastate Rates.
J—Rates proposed by A. C. L. Ry. Co.
(See Exhibit No. —.)

[fol. 472] EXHIBIT No. 53

I. C. C. Docket 18364

Witness: E. M. Price

Statement Showing Result of Operation Atlantic Coast Line Railroad (System)

Year	Gross operating revenues	Average miles of road operated	Per mile of road operated: Operating revenue	Per mile of road operated: Operating expenses	Per mile of road operated: Net operating earnings, revenue
1914	$36,832,779	4661	$7,927	$5,641	$2,285
1921	66,730,767	4893	13,637	11,834	1,783
1922	70,823,344	4852	14,596	10,723	3,872
1923	80,882,310	4860	16,639	12,316	3,323
1924	81,785,921	4865	16,807	12,399	4,408
1925	93,997,697	4890	19,220	13,284	5,936

Increase 1925 over 1914—Per Mile

Gross Earnings	155.2%
Net Earnings	159.8%

Authority: Annual Reports filed with Georgia Public Service Commission.

[fol. 473] SUPPLEMENT 1 TO INTERVENOR'S EXHIBIT 37

I. C. C. Docket 18364

Witness: Reeves

Statement Showing List of Lumber Manufacturers, Members of Southeastern Forest Products Association (Formerly Georgia-Florida Saw Mill Association), Located Within the State of Georgia as of January 18, 1927

(Filed as Part of Intervener's Exhibit 37 in Compliance with Orders of Interstate Commerce Commission in Docket 18364)

Name	Location
Brown-Bland Lumber Co	Stilson, Ga.
W. E. Beverly	Thomasville, Ga.
Bladen Tie & Lumber Co	Brunswick, Ga.

Name	Location
Bray-Giddens & Co	Broxton, Ga.
J. N. Bray & Co	Valdosta, Ga.
Buffalo Lumber Co	Lexington, Ga.
Cobb Lumber Co	Oglethorpe, Ga.
Council Lumber Co	Council, Ga.
Cordele Sash, Door & Lumber Co	Cordele, Ga.
F. W. Darby Lumber Co	Statesboro, Ga.
Dublin Sash & Door Co	Dublin, Ga.
Enterprise Lumber Co	Lumpkin, Ga.
Enterprise Manufacturing Co	Waycross, Ga.
Goodman-Golden Lumber Co	Tifton, Ga.
Hiers Planing Mill Co	Waycross, Ga.
Jackson Brothers Lumber Co	Tallapoosa, Ga.
Jackson Brothers Lumber Co	Valdosta, Ga.
King Lumber & Oil Co	Unadilla, Ga.
King & Thurston	Thomaston, Ga.
Kirby Planing Mill Co	Thomasville, Ga.
J. T. Lord, Jr	Toomsboro, Ga.
Lake Park Lumber Co	Lake Park, Ga.
Mason Lumber Co	Madison, Ga.
Millen Lumber Co	Millen, Ga.
McCollum Lumber Co	Thomasville, Ga.
F. M. Shore & Co	Quitman, Ga.
Southern Sawmill Co	Thomasville, Ga.
Shealey Lumber Co	Nashville, Ga.
Tyson Lumber Co	Meigs, Ga.
Turner Lumber Co	Millen, Ga.
Warsaw Lumber Co	Warsaw, Ga.

[fol. 474] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE NARRATIVE STATEMENT OF TESTIMONY, ETC., AND ORDER APPROVING SAME—Filed Nov. 16, 1929

The complainants, having offered in evidence before the District Court a certified full copy of the transcript of the [fol. 475] evidence and proceedings before the Interstate

Commerce Commission in the matter entitled No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, decided August 2, 1928, and the same having been received by the Court and made a part of the record herein; now for the purpose of reducing the record on the appeals pursuant to Equity Rule No. 75 the parties by their respective counsel stipulate:

I

The within and attached volume of condensed and narrative statement of testimony constitutes a true and correct transcript in condensed and narrative statement form of all the testimony before said Commission in said matter No. 18364 and contained in the said certified full copy so offered and received in evidence and now on file with the Clerk herein.

II

The Clerk shall include in the certified transcript of the record on the appeal to the Supreme Court, the within and attached volume of condensed and narrative statement of testimony in lieu of the certified full copy of such testimony now on file with the Clerk herein.

III

The Clerk shall include in the certified transcript of the record on the appeals to the Supreme Court in their appropriate order copies of all papers which were filed and entered in these proceedings in equity, subsequent to the date of the entry of the order allowing the appeals of the State of Florida, et al. in No. 514, Brooks-Scanlon Corporation, et al., in No. 511, and Wilson Lumber Company of Florida, in No. 512, on June 6, 1929.

Fred H. Davis, as Attorney General; T. T. Turnbull, Solicitors for Complainants in No. 514. Geo. L. [fol. 476] Rutherford, H. P. Adair, E. W. Mitchell, August Gutheim, Chas. E. Cotterill, Solicitors for Complainants in No. 511. J. V. Norman, Solicitor for Complainant in No. 512. Elmer B. Collins, Solicitor for United States of America. J. Stanley Payne, Solicitor for Interstate Commerce

Commission. Jas. A. Perry, Solicitor for Georgia Public Service Commission. Robt. Alston, Solicitor for Atlantic Coast Line Railroad Company, Defendants and Intervening Defendants in Nos. 514, 511, and 512.

[fols. 477 & 478] Order

The foregoing stipulation is approved:

Pursuant thereto it is ordered that the condensed and narrative statement of testimony consisting of the within and attached volume be and the same is hereby approved; and the Clerk is directed to include the same in the certified copy of the transcript of the record on the appeal to the Supreme Court in lieu of the certified full copy now on file with the Clerk; and in the same manner to include in their appropriate order in the transcript the papers specified in paragraph III of the Stipulation.

By the Court:

James [Signature illegible], Judge Northern District of Georgia, Atlanta Division.

Nov. 16th, 1929.

[fol. 479] Before Interstate Commerce Commission

Docket No. 18364

Georgia Public Service Commission, Complainant,

vs.

Atlantic Coast Line Railroad Company, Defendant

Narrative Statement of Testimony

Valdosta, Ga., October 20, 1926—10 o'clock a. m.

Before Examiners F. C. Hillyer and R. N. Brown

Met pursuant to notice.

Appearances of Counsel

James A. Perry, C. R. Bennett, Albert J. Woodruff, W. R. McDonald and E. M. Price, for the Georgia Public Service Commission, complainant.

Carl H. Davis, for the Atlantic Coast Line Railroad Company, defendant.

R. Hudson Burr, A. S. Wells, E. S. Matthews, Fred H. Davis and J. H. Tench, for the Florida Railroad Commission, intervenor; Charles E. Cotterill, for the Cummer Cypress Company, Wilson Cypress Company and Putnam [fol. 480] Lumber Company, intervenors.

J. O. Cassily and E. C. Greene, for the Jacksonville Traffic Bureau intervenor.

J. S. Farrish, for the Georgia-Florida Saw Mill Association, and Roofer Manufacturers' Club of Georgia, intervenors.

R. E. Mich, for the Southern Cypress Manufacturers' Association, intervenor.

E. W. Mitchell, for Cummer Cypress Company, intervenor.

H. P. Adair, for Putnam Lumber Company, intervenor.

H. P. Osborne, for the Wilson Cypress Company, intervenor.

A. G. T. Moore, for the Southern Pine Association, intervenor.

George L. Rutherford, for the Brooks-Scanlon Corporati-n, intervenor.

Edward P. Sanborn, for the Brooks-Scanlon Corporation, intervenor.

T. J. McGinn, for the Board of Trade and City of Savannah, intervenor.

F. E. Harrison, Jr., for the Florida Traffic Associati-n, intervenor.

Henry Thurtell, for the Seaboard Air Line Railway Company, the Central of Georgia Railroad, Southern Railway, and Georgia Southern and Florida Railroad, intervenors.

O. C. Abrams, for the Seabord Air Line Railway, intervenor.

J. A. Streyer and D. F. Kirkpatrick, for the American Short Line Railroad Association and the Georgia and Florida Railroad, intervenors.

J. M. Simmons, for the Alberta Crate Company and Champion Box Company, intervenors.

"Examiner Hillyer: The Interstate Commerce Commission has set for hearing at this time and place, Docket 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company."

(Appearances were then taken.)

[fol. 481] "Examiner Hillyer: This is what is known as a section 13 case, and the State of Florida has been notified in accordance with the statute."

"Examiner Brown: I am going to read a statement of the issues in this proceeding. If there is any disagreement with the issues as stated by me, please so state:

It is alleged that the rates on logs, in carloads, from points in Florida to destinations in Georgia are unreasonable, unjustly discriminatory, unduly preferential of Florida shippers, and the Florida intrastate traffic, and unduly prejudicial to Georgia shippers, and to interstate traffic, in violation of sections 1, 2, 3, and 13 of the Interstate Commerce Act.

The Commission is asked to prescribe reasonable rates for the future" (Tes., p. 9).

[fol. 482] Exam. Brown: You have heard the statement of the issues read. Are there any corrections or changes to be made in that statement? If not, the complainant, the Georgia Public Service Commission, may proceed now with the production of witnesses (Tes. p. 10).

E. M. PRICE, was called as a witness on behalf of Complainant, and being first duly sworn, testified as follows:

Direct examination.

(By Mr. Perry:)

My name is E. M. Price. I am connected with the Georgia Public Service Commission, with the title of rate expert, [fol. 483] which position I have held for the past seven years; previous to my connection with the Commission, beginning in 1889, I was connected with various railroads in the Southeast and Mississippi Valley territory in various capacities, the greater part of the time being in the traffic department. I am familiar with the issues in this case and the conditions that prompted the Georgia Public Service Commission to bring this complaint. The following conditions actuated the Georgia Commission to bring

this complaint. In 1916 the Georgia carriers filed a petition with the Georgia Commission for a general revision of all class and commodity rates for intrastate application. After extended hearings the Commission issued an order revising all class and commodity rates, including rates on logs, to become effective in September, 1918, but on account of the carriers being taken under Federal control during the period of the war, the effective date of this order was indefinitely postponed, and due to changed conditions brought about during the period of Federal control, the Georgia Commission did not revise this 1918 order, but on July 14, 1921, the Georgia Commission issued an order requiring all the carriers in Georgia to submit schedules of rates on all classes and commodities, which had for its purpose the removal of existing irregularities and discriminations between points in Georgia.

This order of the Commission was complied with, and, of course, included rates on logs. Extensive hearings were [fol. 484] held on the rates submitted during the fall and winter of 1921. Subsequent to that time the Georgia Commission has revised the class rates and the rates on many commodities. The method of procedure of the Georgia Commission in these cases has been for the Commission to submit certain schedules to carriers and shippers for criticism, similar to the method of a proposed report case before the Interstate Commerce Commission. In October, 1923, the Georgia Commission submitted proposed or tentative rates on logs, criticisms on which were held by the Commission on November 26, 1923. Objections were filed by both carriers and shippers, all of which were taken into consideration by the Commission, which resulted in a final order dated April 15, 1925, to become effective June 1, 1925.

At the insistence of shippers' representatives, the effective date of this order was postponed until August 1, 1925, and a hearing had in July of the same year, in order that the shippers might have the opportunity of submitting evidence as to why the order should not be further postponed or rescinded. At this July, 1925, hearing, this Flor- [fol. 485] ida situation which we have under review in this case was brought to the attention of the Georgia Commission. My purpose in making reference to the consideration which the Georgia Commission has given to its rates at

the times I have enumerated is simply by way of information. It is not my purpose to bring or attempt to bring into review Georgia's present rates on logs or any proposed scale of rates on logs at the times I have enumerated, reflecting the dates when this subject was under consideration by the Georgia Commission. The Georgia intra-state rates are not involved in this proceeding in any manner whatsoever. Only the rates on the Atlantic Coast Line between Florida and Georgia for a distance of 170 miles as compared with the rates of that road between points in Florida for the same distance.

I stated a moment ago when it was that the Florida situation was brought to the attention of the Georgia Commission. Some of the facts reflecting the effect of this Florida situation as were presented to the Georgia Commission are as follows: The late Mr. W. E. Gardner, representing the Georgia Forest Products Association, consisting of 12 lumber manufacturers in various sections of Georgia stated (Tes. p. 13):

"Should the Georgia Commission require these new and revised and greatly increased rates to go into effect, it would have the effect of moving industries located at this time in Georgia to the neighboring state of Florida, where even the present rates are much lower than present Georgia scale."

This statement was concurred in by Mr. Farish, representing the Georgia-Florida Saw Mill Association, Mr. Strobel, of the North Carolina Pine Association, Mr. Moore, of the Southern Pine Association, Mr. Grady of the Augusta Board of Commerce and Augusta Traffic Bureau, Mr. [fol. 486] True, of Savannah River Lumber Company, Mr. Linthicum, representing C. I. Harrell, and D. W. Almond, and Mr. J. P. Webster, representing Mr. J. M. Simmons, of Bainbridge, Ga.

Mr. True, in discussing the Georgia rates then under consideration, testified: "We could not pass the increased costs on to the consumer because the manufacturer in Florida still has the present rates, and we could not, competitive conditions would not permit us to pass the increase on to the consumer."

Charles I. Harrell, representing the Southern Heading and Manufacturing Company, Valdosta, Georgia, and

others, testified: "I am very frank to tell you that I, for one, have already considered negotiation for a location in Florida unless we can obtain relief in the State of Georgia. [fol. 487] Mr. J. M. Simmons, of Bainbridge, Georgia, whom I understand is to testify here to day in this case, testified before the Georgia Commission that he had already moved half of his operations to Florida, that Jacksonville now has an advantage over him of $2 per one thousand profit on logs, as well as $2 on the raw material, and Jacksonville was therefore able to cut his price on products shipped into Georgia (Tes. p. 15).

The Act of the General Assembly of Georgia, approved December 18, 1890, provides that it shall be the duty of the Georgia Commission to investigate rates into and out of the State of Georgia, and where, in the opinion of the Commission, such rates are excessive or unreasonable or discriminating in their nature, it shall be the duty of the Commission to bring the matter to the attention of the railroads and urge upon them the propriety of changing such rates; whenever such rates are not accordingly changed, it shall be the duty of the Commission to present the facts to the Interstate Commerce Commission and appeal to it for relief. This Florida situation was handled in the manner provided by the Georgia law. The matter was brought to the attention of the Atlantic Coast Line traffic officials, with the request that they consider extending the Florida intrastate rates complained of into the State of Georgia, which they declined to do. Then in compliance with the law, the Georgia Commission filed this complaint with the Interstate Commerce Commission. The Georgia Commission [fol. 488] did not have any alternative (Tes. p. 16). It has been the practice of the Georgia Commission to proceed in such situations as the law requires to have removed such conditions.

(By Mr. Perry:)

"Q. Mr. Price, do you know whether or not there is any movement of logs from Florida shipping points to Georgia destinations?

"A. No, I do not know, of my own knowledge, but from investigations I have made I do not think it possible for there to be any extensive movement.

"Q. What investigations have you made in regard to rates from Florida points to Georgia destinations?

"A. I have prepared an exhibit consisting of 12 pages which gives a rather complete picture of the situation.

(Exhibit No. 1, consisting of 12 sheets of tabulated statements of rates, marked sheets 1 to 11, and including sheet 7½, was received in evidence.)

Sheet 1 of this exhibit shows a comparison of rates on logs intrastate between points in Florida with rates applying interstate from Florida into Georgia. The rates from Florida into Georgia are stated in the tariff in cents per 100 pounds, and the minimum is 40,000 pounds, and to make proper comparison with the Florida intrastate rates I have converted this to a per car basis. It will be noted that for a distance of 90 miles the Florida intrastate rate is $11.50, as compared with the Florida-Georgia interstate rate for the same distance of $35, and for a distance of 170 miles the Florida intrastate rate is $18.50 a car as compared with the [fol. 489] Georgia-Florida interstate rate of $47.50 per car. The exhibit is self-explanatory and I do not think further comment is necessary to direct attention to the great difference in the two schedules of rates.

The Florida rates are based on 50,000 pounds. The Florida-Georgia interstate rates are based on 40,000 pounds and stated in cents per 100 pounds in the tariff and they have been converted to a per-car basis on 50,000 pounds, so as to conform to the intrastate rates in Florida, to make a proper comparison (Tes. p. 17).

Sheet 2 is for the purpose of showing the discrimination against Bainbridge, Georgia, as compared with log manufacturing points in Florida.

Should Mr. J. M. Simmons, or any other manufacturer at Bainbridge, buy logs at Stringer, Florida, a distance of 51 miles from Bainbridge, the rate would be $27,50 per car, whereas his competitor at Jacksonville, Florida, can buy logs at Lake Butler, Florida, a distance of 53 miles, and his rate would only be $10.50, or a discrimination against Bainbridge of $17 per car. Should the manufacturer at Bainbridge buy logs at Miccosukee, Florida, a distance of 56 miles, he would pay a rate of $27.50 per car, whereas his competitor at Perry, Florida, can buy logs at

Wilcox, Florida, a distance of 57 miles, and get a rate of $10.50 per car.

Should the manufacturer at Bainbridge buy logs at Fan-
[fol. 490] lew, Florida, a distance of 80 miles, he would pay a rate of $32.50 per car, whereas the manufacturer at Jacksonville, Florida, can buy logs at Haile, Florida, a distance of 81 miles, and get a rate of $11.50 per car, or a discrimination against Bainbridge of $21 per car.

Should the manufacturer at Bainbridge buy logs at Padlock, Florida, a distance of 159 miles, he would pay a rate of $45 per car, whereas his competitor at Perry, Florida, can buy logs at Greers, Florida, a distance of 166 miles, and get a rate of $18.50 per car, or a discrimination against Bainbridge of $26.50 per car (Tes. p. 18).

As stated before, I do not know of my own knowledge whether there is any movement of logs from Florida into Georgia, but it seems inconceivable to me that there would be enough profit in any lumber manufacturing business that would enable a manufacturer at Bainbridge to absorb $26.50 freight cost on logs in order to meet the price of his competitor at Jacksonville and Perry, Florida, assuming that the rates on the outbound product would be the same. Of course if the rate outbound from Bainbridge is higher in proportion than the rate from the Florida manufacturing point, the Georgia manufacturer would also have to make this absorption.

Sheet No. 3 is for the purpose of showing the discriminations existing at Albany, Georgia, in favor of log manufacturers in Florida. Should the Reynolds Brothers Lum-
[fol. 491] ber Company at Albany, Ga., purchase logs at Forrester, Fla., a distance of 74 miles, they would have to pay rate of $32.50 per car, whereas their competitor at Jacksonville, Fla., can purchase logs at Cadillac, Fla., a distance of 78 miles, and the rate would only be $11.50 per car, or a discrimination against Albany of $21 per car.

Should the Albany manufacturer purchase logs at Bryants Still, Fla., a distance of 78 miles, he would pay a rate of $32.50 per car, whereas his competitor at Perry, Fla., can buy logs at Otter Creek, Fla., a distance of 78 miles, which is the same distance as from Bryants Still, Fla., to Albany, Ga., yet the competitor at Perry, Fla., would get a rate of $11.50 per car, and the Albany manufacturer would

have to absorb the difference of $21 per car, although the logs to both manufacturing points were hauled identically the same distance.

If Reynolds Brothers at Albany should purchase logs at Monticello, Fla., a distance of 82 miles, they would pay rate of $35 per car, whereas his competitor at Perry, Fla., can purchase logs at Gunntown, Fla., a distance of 84 miles, and get a rate of $11.50 per car, a discrimination of $23.50 against Reynolds Brothers at Albany.

Should Reynolds Brothers, at Albany, buy logs at Asylum, Fla., a distance of 115 miles, they would pay rate of $40 per car, whereas his competitor at Jacksonville, Fla., can purchase logs at Eugene, Fla., a distance of 115 miles, or exactly the same distance as Asylum to Albany, Ga., yet [fol. 492] the Jacksonville competitor would get a rate of $16 per car, or $24 per car less for the same distance than would have to be paid by Reynolds Brothers, at Albany.

Should Reynolds Brothers at Albany, buy logs at Suwanee, Fla., a distance of 170 miles, they would pay a rate of $47.50 per car, whereas their competitor at Perry, Fla., can buy logs at Lumberton, Fla., a distance of 168 miles, and pay rate of $18.50 per car, or a discrimination against Albany of $29 per car.

I have never been engaged in the lumber business, but unless there is more profit in this business than I have been led to believe, I do not think it possible for Reynolds Brothers Lumber Company at Albany to meet the competition of the Florida manufacturer in any case where Florida logs are used.

Sheet No. 4 is submitted for the purpose of showing the discrimination against the manufacturer at Thomasville, Ga.

It will be noted that if the manufacturer at Thomasville should buy logs at Monticello, Brice and Wadesboro, Fla., distances of 24 and 27 miles, he would pay rate of $20 per car, whereas his competitor at Perry, Fla., can buy logs at Hines, Fla., a distance of 34 miles, and get a rate of $8.55 per car, or a discrimination against Thomasville of $11.95.

Should the manufacturer at Thomasville purchase logs at Jasper, Fla., a distance of 103 miles, or at Marion, Fla., a [fol. 493] distance of 108 miles, he would pay a rate of $37.50 per car, whereas his competitor at Jacksonville, Fla.,

can buy logs at Old Town, Fla., a distance of 109 miles, and get a rate of $14 per car, or a discrimination against Thomasville of $23.50 per car.

Should Thomasville purchase logs at Sawanee, Fla., a distance of 112 miles, he would pay a rate of $40 per car, whereas his competitor at Perry, Fla., can buy logs at Hernando, Fla., a distance of 120 miles, and get a rate of $16 per car, or a discrimination against Thomasville of $24 per car.

Should Thomasville buy logs at Hildreths, Fla., a distance of 150 miles, he would pay rate of $45 per car, whereas his competitor at Jacksonville, Fla., can buy logs at Stanco, Fla., a distance of 150 miles, or identically the same distance as from Hildreths to Thomasville, yet the Jacksonville manufacturer would get a rate of $17 per car, or a discrimination against Thomasville of $28 per car.

Should the manufacturer at Thomasville purchase logs at Sisters Welcome, Fla., a distance of 167 miles, he would pay a rate of $47.50 per car, whereas his competitor at Perry, Fla., can purchase logs at Lumberton, Fla., a distance of 168 miles, and get a rate of $18.50 per car, or a discrimination against Thomasville of $29 per car.

It will be noted that Thomasville is just across the Florida line, but I cannot conceive of a manufacturer at that point using Florida logs to any great extent, and it is our contention that the manufacturer at Thomasville should have the [fol. 494] same opportunity of using Florida logs as the manufacturer at Jacksonville, Perry or any other manufacturing point.

Sheet No. 5 is submitted for the purpose of illustrating the conditions as they exist at Quitman, Ga.

It will be noted that should the manufacturer at Quitman purchase logs at Forrester, Fla., a distance of 42 miles, he would pay rate of $25 per car, whereas his competitor at Jacksonville, Fla., can purchase logs at Lake Butler, Fla., a distance of 53 miles, and get a rate of $10.50 or $14.50 less than the manufacturer at Quitman, although the distance from Lake Butler to Jacksonville, Fla., is 11 miles further than from Forrester, Fla., to Quitman, Ga.

Should the manufacturer at Quitman buy logs at Wadesboro, Fla., a distance of 53 miles, he would pay rate of $27.50 per car, whereas his competitor at Perry, Fla., can

buy logs at Hickory, Fla., a distance of 87 miles, and get a rate of $11.50 per car, or a discrimination against Quitman of $16 per car, notwithstanding the distance from Wadesboro to Quitman is 34 miles less than the distance from Hickory to Perry, Fla.

Should the manufacturer at Quitman buy logs at McAlpin, Fla., a distance of 104 miles, he would pay a rate of $37.50 per car, whereas his competitor at Perry, Fla., can buy logs at Gibora, Fla., a distance of 110 miles, and get a rate of $14 per car, or a discrimination against Quitman of $23.50 per car.

[fol. 495] Should the manufacturer at Quitman purchase logs at Burnetts Lake, Fla., a distance of 148 miles, he would pay a rate of $45 per car, whereas his competitor at Jacksonville, Fla., can purchase logs at Stanco, Fla., a distance of 150 miles, and get a rate of $17 per car, or a discrimination of $28 per car against Quitman.

Here again it will be noted how impossible it is for the manufacturer at Quitman to meet his competition in Florida on anything like a profitable basis, notwithstanding that Quitman is located directly on the border of Florida.

Sheet No. 6 is for the purpose of showing the discrimination against the manufacturer of logs at Valdosta, Ga.

Should Jackson Brothers Lumber Company at Valdosta purchase logs at Bakers Mill, Fla., a distance of 55 miles, they would have to pay a rate of $27.50 per car, whereas their competitor at Jacksonville, Fla., can purchase logs at Munich, Fla., a distance of 59 miles, and get a rate of $10.50 per car, or a discrimination against Jackson Brothers at Valdosta of $17 per car.

Should Jackson Brothers, at Valdosta, purchase logs at Alma, Fla., a distance of 61 miles, they would have to pay rate of $30 per car, whereas their competitor at Perry, Fla., can purchase logs at Ushur, Fla., a distance of 72 miles, and get a rate of $11.50 per car, or $18.50 less than that paid by Jackson Brothers at Valdosta, notwithstanding the dis-
[fol. 496] tance from Ushur to Perry, Fla., is 11 miles greater than from Alma, Fla., to Valdosta, Ga.

Should Jackson Brothers at Valdosta, purcahse logs at Rixeford, Fla., a distance of 71 miles, they would pay a rate of $32.50 per car, whereas their competitor at Perry, Fla.,

can purchase logs at Hickory, Fla., a distance of 87 miles, and get a rate of $11.50 per car, a discrimination against Valdosta, of $21 per car, although the distance from Hickory to Perry, Fla., is 16 miles greater than from Rixeford, Fla., to Valdosta, Ga.

Should the manufacturer at Valdosta, purchase logs at Bass, Fla., a distance of 122 miles, he would pay a rate of $42.50 per car, whereas his competitor at Jacksonville, Fla., can purchase logs at Hines, Fla., a distance of 128 miles, and get a rate of $16 per car, or a discrimination against Valdosta of $26.50 per car.

Should the manufacturer at Valdosta purchase logs at Paradise, Florida, a distance of 141 miles, he would pay rate of $45 per car, whereas his competitor at Jacksonville, Fla., can buy logs at Pineland, Fla., a distance of 156 miles, and get a rate of $17 per car, or a discrimination against Valdosta of $28 per car, although the distance from Pineland, Fla., to Jacksonville, Fla., is 15 miles greater than from Paradise, Fla., to Valdosta, Ga.

It is our contention that Jackson Brothers Lumber Com- [fol. 497] pany and other log manufacturers at Valdosta, should have the same opportunity of buying logs at Florida as their competitors at Jacksonville and Perry or any other manufacturing point in Florida, but this exhibit shows how impossible it will be for Jackson Brothers or others at Valdosta to meet the prices of their Florida competitors without absorbing heavy losses.

Sheet No. 7 and Sheet No. 7½, are designed for the purpose of showing the discrimination against the manufacturers of logs at Waycross, Ga.

It will be noted that should the Enterprise Manufacturing Company, who are manufacturers of logs at Waycross, buy logs at Bakers Mill, Fla., a distance of 63 miles, they would pay rate of $30 per car, whereas their competitor at Perry, Fla., can buy logs at Lebanon, Fla., a distance of 92 miles, and get a rate of $11.50 per car; or a discrimination against the Enterprise Manufacturing Company, of $18.50 per car, notwithstanding the distance from Lebanon to Perry, Fla., is 29 miles greater than from Bakers Mill, Fla., to Waycross, Ga.

Should the Enterprise Manufacturing Company at Waycross buy logs at Cambon, Fla., a distance of 79 miles, they

would pay rate of $32.50 per car, whereas their competitor at Jacksonville, Fla., can buy logs at Haile, Fla., a distance of 81 miles, and get a rate of $11.50 per car; or a discrimination against Waycross of $21.

Should the Enterprise Manufacturing Company buy logs [fol. 498] at Bessent, Florida, a distance of 100 miles, they would pay rate of $35 per car, whereas their competitor at Perry, Fla., can buy logs at Kemp, Fla., a distance of 100 miles, and get a rate of $13 per car, or $22 per car less than Waycross, although the distance from Kemp to Perry, Fla., is identically the same as from Bessent, Fla., to Waycross, Ga.

Should the Enterprise Manufacturing Company buy logs at Branford, Fla., a distance of 107 miles, they would pay rate of $37.50 per car, whereas their competitor at Jacksonville can buy logs at Old Town, Fla., a distance of 109 miles, and get a rate of $14 per car, or a discrimination against the Enterprise Manufacturing Company of $23.50 per car.

Should the manufacturer at Waycross buy logs at Columbia, Fla., a distance of 126 miles, he would pay a rate of $42.50 per car, whereas his competitor at Jacksonville, Fla., can buy logs at Hines, Fla., a distance of 128 miles, and get a rate of $16 per car, or a discrimination against Waycross of $26.50 per car.

Should the Enterprise Manufacturing Company, or other log manufacturers at Waycross buy logs at Fanlew, Fla., a distance of 148 miles, he would pay a rate of $45 per car, whereas his competitor at Perry, Fla., can buy logs at Trilby, Fla., a distance of 154 miles, and get a rate of $17 per car, or a discrimination against Waycross manufacturer of $28 per car.

I do not know to what extent the Enterprise Manufacturing Company or other log manufacturers at Waycross are [fol. 499] buying logs in Florida, but it will be noted from this exhibit that it is all but impossible for Waycross to meet the competition of their Florida competitors without absorbing heavy losses in freight cost on their logs, although the logs to Waycross may be hauled for a much less distance than they are hauled to their competitors in Florida.

Now, Mr. Examiner, the illustrations which I have given on the preceding sheets show the discriminations against Albany, Waycross and other Georgia manufacturing points, predicated on the logs moving for the same or greater distance to the Florida manufacturing points, although in each instance the logs would not originate at the same shipping point in Florida.

Sheet No. 8 is submitted for the purpose of showing the discrimination against the manufacturer of logs at Thomasville, Ga., and the total amount he would have to absorb to meet the competition of his competitor at Jacksonville, Fla., both Jacksonville, Fla., and Thomasville, Ga., buying their logs at the same shipping point in Florida.

The amount of the discrimination shown is predicated on the usual estimate of three cars of logs to produce one car of finished material.

It will be noted that should the manufacturer of logs at Thomasville, Ga., and Jacksonville, Fla., both buy logs at Bakers Mill, Fla., the rate paid by the manufacturer at Thomasville would be $35 per car for a distance of 99 miles, [fol. 500] whereas his competitor at Jacksonville, Fla., would pay rate of $17 per car for a distance of 138 miles, and in order for the manufacturer at Thomasville to meet the competition of his Jacksonville, Fla., competitor on a car of finished material, the manufacturer at Thomasville would have to absorb $54 for each car of finished material.

Should the manufacturer at Thomasville and Jacksonville, both buy logs at Suwanee, Fla., the manufacturer at Thomasville would have to pay rate of $40 per car for a distance of 112 miles, whereas his competitor at Jacksonville would only pay $17 per car for a distance of 135 miles, and the manufacturer at Thomasville would have to absorb $69 on each car of finished material before he could meet the competition of his competitor at Jacksonville.

Should the manufacturer at Thomasville and Jacksonville both purchase logs at Padlock, Fla., the manufacturer at Thomasville would pay a rate of $42.50 per car for a distance of 123 miles, and his competitor at Jacksonville would only pay $16 per car for a distance of 123 miles, or identically the same distance as Thomasville, and yet the manufacturer at Thomasville would have to absorb $79.50 on

each car of finished material before he could meet the competition of his competitor at Jacksonville.

The outbound rates on finished material, of course, are not involved in this proceeding and the discrimination shown on this exhibit only applies to the freight cost on the inbound movement of logs, assuming that both Thomas-
[fol. 501] ville and Jacksonville purchase their logs at the same points in Florida. Of course, whatever advantage Jacksonville should have in the outbound movement of finished material the manufacturer at Thomasville would have to absorb in addition to the discrimination on the inbound movement of logs.

Sheet No. 9 is designed to show the discrimination against the manufacturer of logs at Quitman, Ga., in favor of Jacksonville, Fla., assuming that the manufacturer at Quitman and Jacksonville both purchase their logs at the same shipping point in Florida.

It will be noted that should the manufacturer at Quitman and Jacksonville both purchase logs at Bakers Mill, Fla., Quitman would pay a rate of $32.50 per car for a distance of 72 miles, whereas his competitor at Jacksonville would only pay a rate of $17 per car for a distance of 138 miles, and before the manufacturer at Quitman could meet the competition of the manufacturer at Jacksonville, the manufacturer at Quitman would have to absorb $46.50 on each car of finished material, notwithstanding the fact that both Quitman and Jacksonville purchased their logs at the same shipping point in Florida, and the distance from this shiping point to Quitman is 66 miles nearer or less than it is to Jacksonville.

Should the manufacturer at Quitman and Jacksonville both purchase logs at Suwanee, Fla., the manufacturer at Quitman would pay a rate of $35 per car for a distance of 85 miles, whereas his competitor at Jacksonville can get a
[fol. 502] rate of $17 per car for a distance of 135 miles, and the manufacturer at Quitman would have to absorb $54 on each car of finished material before he could meet the competition of his Jacksonbille competitor, notwithstanding the distance from Suwanee to Jacksonville is 50 miles greater than Suwanee, Fla., to Quitman, Ga.

Should the manufacturer at Quitman and Jacksonville both buy logs at O'Brien, Fla., the manufacturer at Quit-

man would have to pay rate of $40 per car for distance of 111 miles, whereas his competitor at Jacksonville would only pay a rate of $14 per car for a distance of 110 miles, and the manufacturer at Quitman would have to absorb $78 on each car of finished material before he could meet the competition of his Jacksonville competitor.

As stated, with reference to previous exhibits, the discrimination shown on this sheet only applies to the inbound movement of the logs, and assuming that the outbound rates on the finished material were the same from both Jacksonville, Fla., and Quitman, Ga., it would be impracticable for the log manufacturer at Quitman to make these absorptions without suffering heavy losses, unless there is more profit in the manufacture of logs than I have been led to believe.

Sheet No. 10 is designed for the purpose of showing the discrimination against Valdosta, Ga., in favor of Florida manufacturing points.

Should Jackson Brothers Lumber Company at Valdosta [fol. 503] buy logs at Bakers Mill, Fla., a distance of 55 miles, they would pay a rate of $27.50 per car; whereas their competitor at Jacksonville, Fla., could buy logs at Bakers Mill, Fla., and get a rate of $17 per car, alt-ough the distance from Bakers Mill, Fla., to Jacksonville is 138 miles, and before Jackson Brothers could meet the Jacksonville competition they would have to absorb $31.50 on each car of finished material.

Should both the manufacturers at Valdosta and Jacksonville buy logs at Suwanee, Fla., the manufacturer at Valdosta would have to pay rate of $30 per car for distance of 68 miles, and the manufacturer at Jacksonville would only pay $17 per car, for distance of 135 miles, and the manufacturer at Valdosta would have to absorb in freight charges on the inbound movement of logs $39 per car on each car of finished material, although his logs were hauled about half the distance as his competitor's at Jacksonville.

Should Jackson Brothers or any other manufacturer at Valdosta, and his competitors at Jacksonville, buy logs at McAlpin, Fla., the Valdosta manufacturer would pay rate of $35 per car for distance of 87 miles, as compared with his competitor at Jacksonville, paying $16 per car for a distance of 117 miles, or a discrimination against the

Valdosta manufacturer of $57 per car on each car of finished material.

Should the manufacturer at Valdosta and Perry, Fla., both buy logs at Mandeville, Fla., the manufacturer at Valdosta would pay rate of $45 per car for a distance of 144 [fol. 504] miles, whereas his competitor at Perry, Fla., would only pay a rate of $17 per car for a distance of 148 miles, and the manufacturer at Valdosta would have to absorb $84 on each car of finished material before he could meet the competition of his competitor at Perry, Fla., on the inbound cost of logs alone.

It is our contention that Jackson Brothers Lumber Company or any other manufacturer of logs at Valdosta, Ga., should be afforded the same opportunity of buying logs in Florida on equal basis with their competitors located at Jacksonville and Perry, Fla., or in fact located at any other point in Florida.

Sheet No. 11 is designed to show the discrimination against the manufacturer of logs at Waycross, Ga.

Should the Enterprise Manufacturing Company, or any other log manufacturer at Waycross buy logs at Jasper, Fla., they would pay a rate of $30 per car for a distance of 67 miles, whereas their competitor at Jacksonville, Fla., can buy these same logs and get a rate of $17 per car, although the distance is 142 miles, and it will be necessary for the Enterprise Manufacturing Company at Waycross to absorb $39 per car on each car of finished material before he can meet the competition of his competitor at Jacksonville, Fla.

Should the Enterprise Manufacturing Company at Waycross, and his competitor at Jacksonville, buy logs at Rixeford, Fla., the Enterprise Manufacturing Company would pay a rate of $32.50 per car for a distance of 78 miles, [fol. 505] whereas his competitor at Jacksonville would only pay $17 per car for a distance of 132 miles, and the Enterprise Manufacturing Company would have to absorb in this instance $46.50 on each car of finished material in order to meet the competition at Jacksonville.

Should the manufacturer at Waycross and Jacksonville both buy logs at O'Brien, Fla., the manufacturer at Waycross would pay rate of $37.50 per car for a distance of 101 miles, whereas his competitor at Jacksonville would only

pay a rate of $14 per car for a distance of 110 miles, and the Waycross, Ga., manufacturer would have to absorb $70.50 on each car of finished material before he could meet the competition of his Jacksonville competitior.

Should the manufacturers at Waycross, Ga., and Perry, Fla., both buy logs at Raiford, Fla., the manufacturer at Waycross would pay a rate of $40 per car for a distance of 114 miles, whereas his competitor at Perry, Fla., would only pay a rate of $16 per car for a distance of 117 miles, and the manufacturer at Waycross would, therefore, have to absorb $72 on each car of finished material before he could meet the competition at Perry, Fla. We again submit that the Enterprise Manufacturing Company, or any log manufacturer at Waycross, Ga., should be afforded the same opportunity of purchasing logs at Jasper and Rixsford or any other point in Florida at the same rate, distance considered, as his competitors at Jacksonville, Perry, or in fact any other manufacturing point in Florida.

[fol. 506] The intrastate rates in Florida are not confined in their application to Jacksonville and Perry and the complaint of the Georgia Commission is not confined to any particular manufacturing point in Florida, and Jacksonville and Perry were only used to illustrate the conditions as they exist. The Florida intrastate rates involved in this case apply also between any two points in Florida located on the Atlantic Coast Line Railroad for any distance up to 170 miles; therefore such points as Tampa, Lakeland, or any other manufacturing point in Florida on the Atlantic Coast Line can use these Florida rates for a distance of 170 miles.

The Georgia manufacturers at Valdosta, Waycross and other points located on the border of Georgia and Florida undoubtedly have to meet the competition of all of these Florida manufacturers on any business they secure in Florida; it therefore follows that the Georgia manufacturer would be at a distinct disadvantage in securing any business on the Atlantic Coast Line in Florida, even if the rates on the finished material are the same from Georgia into Florida as the rates on finished products intrastate in Florida (Tes. p. 36). There is a limit in the application of the rates on logs from Florida into Georgia. The rates published interstate from Florida to Georgia are confined

in application from certain stations in Florida and therefore the Georgia manufacturer could not draw logs from all points in Florida on this interstate scale, although the [fol. 507] scale is extended for a distance of 540 miles.

I have not prepared any schedule of rates to suggest being used as a means to remove the discrimination against Georgia manufacturers, as shown in our exhibit, but do suggest and contend that the rates now being operated in Florida be extended into Georgia for interstate application. (Tes. p. 36). It is not my understanding that the Florida Railroad Commission prescribed these intrastate rates in Florida. On the other hand, it is my understanding that the rates were voluntarily established either by the Atlantic Coast Line or its predecessors many years ago and were originally confined in application to one point of destination and applied only to movements of train-load lots.

This created discriminations against other manufacturing points in Florida that did not have the privilege of these rates, and the Atlantic Coast Line Railroad was ordered by the Florida Railroad Commission to remove these discriminations. In removing the discriminations, the Atlantic Coast Line elected to extend the application to all points within a distance of 170 miles, and to make them apply to single car movements.

The Atlantic Coast Line in every adjustment of which I have knowledge, where the Florida rates were involved, have always contended that the rates in Florida should be on a higher level than the rates in other portions of southeastern territory, and bearing this in mind, and the fact that they have voluntarily been operating this Florida log scale [fol. 508] for a number of years, I feel that this justifies the reasonableness of the Florida scale for interstate application into Georgia.

While this is not a revenue case, it is possible that the Commission will give some consideration to the possible effect on the Atlantic Coast Line revenues if these discriminations are removed by requiring the Florida scale to be extended into Georgia, and if so we would like to call attention to the impossibility of any extensive movement at the present time from Florida to Georgia on the present high interstate rates, and, therefore, it follows that if the Geor-

gia manufacturer is given the benefit of these Florida rates, the same as his Florida competitor, it will very materially increase the movement from Florida into Georgia and thus have the effect of creating new and increased revenues for the Atlantic Coast Line, rather than to decrease their revenues.

Cross-examination.

(By Mr. Thurtell:)

Various parties presented testimony before the Georgia Commission in 1921 relative to the matter of reasonable class and commodity rates, and the testimony also dealt with the rates on logs, and we are entitled to believe that based on that testimony and its best information the scale of rates which the Georgia Commission required the railroads to establish represented its best judgment as to reasonable rates at the time (Tes. p. 39). I assisted the Georgia [fol. 509] Commission in reaching a judgment as to these log rates.

"Q. Mr. Price, do you know of any reason, transportation or otherwise, why the rates on logs in Georgia might reasonably be higher than the rates applied from Florida into Georgia"?

(Objection; argument on the objection.)

"Examiner Hillyer: I assume, then, that the purpose of the question is to measure the rates in issue with the rates prescribed by the Georgia Public Service Commission?"

"Mr. Thurtell: Yes, sir."

"Examiner Hillyer: He may answer for that purpose."

(Objection, and argument on objection.)

"Examiner Hillyer: The Examiners are of the opinion that the question should be answered."

The Witness (Mr. Price, continuing): The rates between points in Georgia, the intrastate rates in Georgia are not under consideration here, and the rates which you referred to as covered by the Georgia Commission's order, have been cancelled, and have no legal standing, and as it is stated in the Commission's order of cancellation, the sub-

ject is being held on the docket of the Georgia Commission for further consideration, and the answer to your question calls for further investigation on the part of the Georgia Commission as to what should be the reasonable rates between points in Georgia (Tes. p. 43).

I do not think that the interstate rates from Florida into Georgia should be higher than the intrastate rates between [fol. 510] points in Florida. That is our contention here and I have answered your question the best I can.

"Q. Do you contend that the rates from Florida into Georgia may reasonably be lower than the rates that may reasonably be applied locally in Georgia?

"A. I am making no contention at all about the Georgia intrastate rates. As to whether, according to my best judgment, these rates from Florida into Georgia may be reasonably lower than may reasonably be applied in the State of Georgia, that is a matter of investigation which the Georgia Commision is now making and I cannot answer that."

"I have made no study of whether the rates from Florida into Georgia should be lower than are applied from South Carolina into Georgia for like distances, and I would not like to express an opinion on it. My study in this case has been with regard to the rates from Florida into Georgia as compared with the rates between points in Florida as complained of by the Georgia Commission."

"Q. Do you know of any reason why rates from Florida [fol. 511] into Georgia should be lower than may reasonably be applied in the State of Georgia, or from South Carolina into Georgia, or from Alabama into Georgia, or from any other contiguous state into Georgia."

"A. Without having made any investigation since the cancellation of the Georgia Commission's order I have made no investigation in regard to the South Carolina rates, which are not involved here, but which as a wild guess I would say no."

Mr. Perry (for the Railroad Commission of Georgia): That concludes our case in chief, your Honor.

Examiner Brown: Are there any intervenors on behalf of the complainants here who wish to offer testimony?

(No response.)

Examiner Brown: Defendants, or intervenors on behalf of the defendants, may proceed now.

Mr. Perry, have you examined the petitions of intervention, and have you any objection to them?

Mr. Perry: No objection to the intervention as proposed by the Roofer Manufacturers' Club of Georgia. We object to the petition for intervention of the Cummer Cypress Company. I also object to paragraph 8 of the Putnam Lumber Company's petition for intervention.

(Ground of objection stated.)

(Mr. Perry, continuing:) I also object to the petition of intervention of the Wilson Cypress Company.

(Ground of objections stated, and arguments, Tes. pp. 48 to 56.)

[fol. 512] Examiner Hillyer: It seems to me that the intervenors ought to be able — state in a general way their position towards this complaint in some manner.

Mr. Cotterill: The objects which the petitioners for intervention have are to undertake through this proceeding to avoid any action by this Commission which would have the consequence of changing directly or indirectly, the rates within Florida to which reference has been made (Tes. p. 57). Now the manner in which we shall proceed to accomplish that object, whether it involves an intervention on our part in favor of the complaint, or against the complaint, is something to which we must still ask the privilege of awaiting developments in the case.

Mr. Perry: If your Honor please, as information, I want to ask him this question: Are you opposed or not to the extension of the Florida rates under review here, being extended into Georgia?

Mr. Cotterill: As to that, the policy has not yet been determined.

Mr. Perry: When can you tell us how you stand on that proposition?

Mr. Cotterill: Until we see what evidence the complainant submits calculated by it to establish a case of the unreasonableness of the higher interstate rate.

Mr. Perry: It seems to me, your Honor, that we are going to have a lot of repetition here, and a very awkward

presentation or development of the record. If a party is to be allowed at will, maybe at the end of the case, to tell us about a given position, then we may have to try this case over to a considerable degree. It certainly is a very vital, relevant matter, and it seems to me Mr. Cotterill ought to be able to answer now, because that is all there is in the case, it is all that has ever been in the case, it is all we are asking for and all we hope to gain.

[fol. 513] Mr. Cotterill: I thought the complainant had submitted its evidence in this case and was through. Now, this is a late time to raise the question as to what our duty was at the opening of the case.

Mr. Perry: It went off until this afternoon, your Honor, to be determined. We are at the opening, so far as that is concerned.

Mr. Cotterill: However, may I say as to this matter, or any other matter of like character, we are not here in an obstructive, evasive attitude in the least. We are altogether sincere in what I have said as to our desire, so far as we may be permitted to do so, to reserve the final declaration of our intentions, as long as we may be permitted to do so, or as long as in our judgment may be necessary. But, subject to a change of attitude, if you desire that we now present our case to you through counsel, we shall not hesitate to do it, of course, as a matter of courtesy to the Examiner, but we do think we should be permitted, having declared ourselves to the extent that we have, to reserve our judgment as to the policy concerning certain matters until the evidence concerning those matters shall have been completed.

Exam. Hillyer: The Commission only requires that you state your position with respect to your own rates. Florida's rates are the rates from points in Florida to points in Florida. As I understand it, you are here attempting to continue the present rates.

Mr. Cotterill: So far as this proceeding is concerned, we are attempting to avoid any action which the Commission might take calculated to change those rates, yes, sir.

Exam. Hillyer: And that you have not raised any issue with respect to the rates from Florida into Georgia?

Mr. Cotterill: We have not done so. Whether it should become to our interest to do so or not is a matter as to

which we have not yet been able to reach a conclusion, depending upon the whole evidence on that question.
[fol. 514] Exam. Hillyer: Your position has been stated sufficiently for the Commission's purposes.
[fol. 515] *that will shorten his testimony and perhaps be an economy of time.*

J. C. JACKSON was called as a witness and, being first duly sworn, testified as follows:

Direct examination.

(By Mr. Perry:)

My name is J. C. Jackson, Valdosta, Ga. I am a manufacturer of lumber at Valdosta. My business is of a nature to call for the desirability of procuring logs in Florida. We depend on the railroads for our supply of logs, largely. We draw very little logs from Florida now. We have shipped a few cars from Jennings, Fla., only. It is our desire to have a general flow of logs from Florida to Georgia; we would like to get logs in Florida. As to whether it is possible to have that addition to our present logging interests, we cannot haul over 30 to 40 miles on account of the rate. We cannot draw logs to Valdosta, Ga., from points off the Coast Line, in Florida to points in Georgia—from points off the Coast Line in Florida, from Florida to Georgia, the Southern, and the Georgia, Southern & Florida—we cannot meet the competition, on account of the lower rates in Florida, for one reason, and the rates we have are prohibitive anyway.

"Q. Are those rates which you term low rates in Florida of a nature and lower to the extent that you cannot buy logs in Florida and ship them to Valdosta in competition with manufacturers in Florida?
A. No, sir, we cannot meet competition."

We have business prospects along the line just enumerated, looking to acquiring logs in Florida, in mind now, about 190,000,000 feet that we are figuring on, about half way between here (Valdosta) and Jacksonville. It is not possible for us to acquire that interest in Florida and ship

[fol. 516] them to Valdosta under the present rates. We could not meet the Jacksonville competition. Jacksonville can haul its log- for about $3.10, and it costs us nearly $7. If the Florida rates were extended into Georgia we could move these logs or this lumber that I speak of. We could move that on the rate Jacksonville is getting for the same distance at a profitable handling of them.

The territory from which we draw logs is sufficiently, or nearly exhausted, as to make it desirable in the future to have new fields or territory for our logs. We have only about six months timber in sight in Georgia. We might possibly buy some tracts, but we have only about six months operation now. We would have opportunity to acquire additional timber as favorable as this we speak of in Florida, if we had this Coast Line rate in effect.

"Q. I mean if you had an even show as to rates with your competitor?

A. That is the best proposition I know of.

Q. How long would it take you to manufacture the output of this timber land that you speak of in Florida, into lumber?

A. About ten years.

Q. And it is impossible under the present adjustment of rates?

A. Yes, sir."

There is nothing else that I desire to state more than we are also prohibited from manufacturing lumber from a competitive standpoint from the nearer mills.

We lost a tract of timber last month at Jennings, Florida from the fact that the party in Jasper that bought them could buy them and pay more for the tract on account of their favorable freight rates. We had a rate of $3.10 a [fol. 517] thousand feet and they had $1.50, and we lost the tract on the same railroad, the same line.

There are other manufacturing lumber interests at Valdosta similarly situated to ourselves. The same facts as interfere with us, relative to the rates of which we complain, apply to J. N. Bray and Company, operators here. That is the only mill that is shipping logs (Tes. p. 64).

Cross-examination.

(By Mr. Burr:)

The rates I have reference to are Atlantic Coast Line rates and Jennings is not on the Atlantic Coast Line, but we are paying over the interstate route a higher rate than the regular Georgia rate or the intra-Florida rate. We are buying them over an interstate rate from Jennings and that rate is higher.

(By Mr. Burr:)

"Q. I just want to make it clear from your testimony that Jennings is not an Atlantic Coast Line point. That was the inference from your testimony. It is a Georgia Southern point."

"A. It has a 50-cent rate from Jennings."

The 190,000,000 feet of lumber which I said is between here and Jacksonville, is about ten miles beyond Lake City and lies along the Seaboard Air Line and the Atlantic Coast Line. We would bring it to the Coast Line. It belongs to some eastern interests. I was talking to the party and tried to make the deal with him last night and told him if we got this low rate—the Coast Line rate—extended into Valdosta we could figure with him, otherwise we could not. He was anxious for us to cut his timber (Tes. p. 65). It is not cut over land. It cuts 4,000 to the acre, which is about [fol. 518] the average in Florida. I saw his cruise on it (Tes. p. 66).

Cross-examination continued.

(By Mr. Thurtell:)

We ship our manufactured lumber to the East, largely. As to whether the same rate is applied to the east from Valdosta as from Jasper, I am not sure whether Jasper is in the same rate group as Valdosta, but there is not more than one cent difference. Jacksonville has I think a 2-cent better rate. Savannah, is, I am sure; I am not positive as to Jacksonville. Our competitor at Jacksonville has the steamship rate, the water rate, the port rate. But the rail rate is not very much different from our rate, but I am not sure as to the Jacksonville all-rail rate.

"Q. If I understand your objection to the present state of affairs, it goes to this point, that your rates to Valdosta, from these points in Florida, that you want to reach, and from which you want to draw timber, are higher for like distances, than are the rates from points in Florida to Jacksonville and other mill points in Florida—is that your position?"

"A. That makes it difficult for us to buy stumpage, and we are faced with the proposition of that nature. However, an equalization of that rate in Florida, we could lower our costs and our competition is the fir market largely now."

"Q. Oh, then, it is not the competition at Jacksonville?"

"A. It is not this local Florida business, because our property goes into the East. We are begging for lower rates, we are not only begging for these rates to be equalized, but we need a rate that we could do business on. We can't pay the prices in Florida stumpage and ship it across [fol. 519] the line on the interstate rate now existing, have not been able to so far."

I am in immediate competition with the Pacific Coast. I meet it every day in the high class lumber market. We have to face it every day at the eastern ports (Tes. p. 67).

I would be satisfied if the same rates were made to apply for like distances on this timber to Valdosta as are applied over like distances from this timber to mill points in Florida—the intrastate Florida rate would satisfy me.

I do not expect the Interstate Commerce Commission to do anything except to establish reasonable rates from Florida to Georgia—I should not expect them to do any-[fol. 520] thing but what is reasonable in the interests of the people. I am not prepared to say whether, after that reasonable rate is established, my complaint is satisfied if the same rates are made to apply for like distances from Florida to mill points in Florida as are applied for like distances from these timber tracts in Florida to mill points in Georgia. I figured this Coast Line rate, and figured we could do business on this rate. As to whether I have figured whether or not the other railroads could do business on any such rate, I am not figuring for the railroads.

Redirect examination.

(By Mr. Price:)

Jacksonville and other Florida points have to meet this competition from the West Coast, too, and, therefore, the rates we have to pay on our logs from Florida into Georgia puts us to a double disadvantage. We are at a disadvantage on the West Coast, and then that is increased by our high rates from Florida into Georgia. They can buy logs from any point the same distance that Valdosta is from Jacksonville in northern Florida, anywhere, even from Fanlew, Florida, or south of Perry, into Jacksonville, cheaper than we can haul them 35 miles. It leaves us practically out of competition all over the timber belt, except right on the border line where there is a two or three dollar freight rate now. We had occasion to haul logs from Cross City, about 120 miles. Jacksonville can haul those logs—I am guessing now, for this 120-miles [fol. 521] to Cross City, about the same distance as we are, they can draw those logs from Cross City for $3.10, and it costs us $8.50 on the interstate rate. They can haul them over the Coast Line for $3.10, and it costs us $8.50 on the basis of 5,000 feet per car load o. 50,000 pounds. If our rate from Florida into Georgia was on an equal basis with the rate form Florida into Jacksonville, we would be on an equal footing with Jacksonville to meet this western competition (Tes. p. 70).

(Witness excused.)

J. M. Simmons, called himself as a witness, and being first duly sworn, testified as follows:

Direct examination:

Mr. Examiner, I am here as an orphan child this afternoon representing myself, not as a witness for the railroads or the Commission or any of the bureaus or forest product associations, and I am going to tell the truth as it represents me, these conditions of scrambled eggs rates in the states of Georgia and Florida, represents my business (Test. p. 71).

I have three plants, I represent three plants, one at Thomasville, one at Bainbridge, and one in Tallahassee. I have five different rates for those three different places in the way of logs, and I am not here to say what the railroads ought to charge, if they are making money on the $8.55 rate in Florida, and an interstate rate of $25 for the same distance of 50 miles, they are making a dickens of a lot of [fol. 522] money over here, or losing a lot over there. I think that the interstate rate of $25 per car for 25 miles is prohibitive. It proves it, because there are no logs shipped. I don't buy any interstate because I can't pay the rate, and nobody else that I know of. There is a rate extending across the imaginary line between Georgia and Florida, and nobody using it. We would use it if it was reasonable, and I am going to say by reasonableness I do not mean $8.55, but I want to see this thing adjusted. I want to see a just rate put in at these different places, and make it equal to each and every one of us. I have at Tallahassee now on the Seaboard Air Line a rate for 50 miles of a certain price. I have a rate for 50 miles over in Georgia of another price, and we have a rate on logs across the line into Georgia of another price. We all have to compete with each other. I am not going to—I am not coming here to make a statement this afternoon for the benefit of the Florida mills, or for the benefit of the Georgia mills, I am making a statement this afternoon as I see it, to be just with the railroads, just with the manufacturers, and just to ourselves, where we meet the chief competition, put an equal rate, let it be reasonable, that is what I mean reasonable, and to show you how unreasonable the interstate rate is, nobody can use it, and if the railroads get up here and demand and ask you gentlemen to recommend the interstate rate over in Florida to Georgia, they won't haul any logs, it will be prohibitive. Now, what we want to do is to equalize this rate in a just and fair way. The shipper can't stand any higher rate [fol. 523] than we have got. I am perfectly willing to compromise this thing, and could have done it without all this racket if the railroads had sat across the table and said "Let us do what is right and you do what is right," put in the Seaboard Air Line rate that I am paying in Tallahassee, that is a fair and just rate. Our present rate in Georgia is too high at the present time, and what we want to do is to

adjust this matter to everybody equally. I will state to you that it has cost me a lot of business since I have been in business on account of the inequality of rates, and if I had time and you would let me and would not put me in jail, I could tell you some fool rates in this country that we run into every day, and how in the world they got into such a shape I don't know. This scrambled eggs proposition down here in this log business—in these log rates, is what we are up against right now, and I want to be fair with everybody, and that is the reason I would not go in with anybody, they can ask me all the questions they want when I get through, but I am not a man to get up here and swear that a railroad should make money on that rate, and another could not make money on that rate, but give them a fair rate, and let them get the thing equalized. I want to get this down sure. My remarks just now about a just rate and everything is what I want to see, but I want it known that the present existing rate from Florida into Georgia that we are contending about now is prohibitive in fact, because there is not a car of logs shipped, because nobody can handle them at that price, and we want to get these [fol. 524] scales on a reasonable rate, and when I say a reasonable rate, I mean that the present Georgia intrastate rate is a little too high. I am operating under it, and I ought to know whether it is or not. I am hauling logs, and —I am hauling logs under it, and I ought to know whether I am making any money or not, and we want to get this thing equalized so that the manufacturer, the shipper, the farmer, can sell his logs, and we can buy them, and we can make a little money, as well as the railroads are making money. This is no time for the railroads to be asking for any increase in rates of any kind (Tes. p. 75).

Cross-examination

(By Mr. Burr:)

I do not manufacture lumber for sale. My logs go into box material. I sell either in Florida or Georgia.

We ship in competition to the east, not to the west, and we ship as far east as New York City. We ship to New York I suppose 100 cars a year. We just tack that much on to the freight; we just add it to the price. The farmer

and the consumer pays the freight (Tes. p. 75). As to whether we ship to our mills in blocks or in logs, we ship mostly in blocks. There is a difference in rate but I do not know in favor of which. They make two or three different kinds of log rates down there. You can go to a log road and make a special rate with them. They will haul them over their road and make a rate. I understand there is a tariff issued on hauling logs over the Seaboard or the Georgia, Florida and Alabama, and I am not on the Coast [fol. 525] Line, except at Bainbridge. I am speaking now of in Florida, where you can use over their road your engines, and make a special rate, your own engine. In other words, you have a tram road connection with the Georgia, Florida & Alabama, and they will make us a rate to haul our own logs in over their road, and they will make us a rate to haul our blocks in. That is a trackage service arrangement and they are paid on a trackage rate. I understand there is a difference but I do not know positively.

We get our logs at Bainbridge from up and down the Coast Line and the Georgia, Florida & Alabama, in Georgia and in Florida too. We haul a heap of blocks from Quincy and Havana (Florida) to Bainbridge.

"Q. I understood you could not haul them."

"A. Oh, yes, the Georgia, Florida & Alabama is a good railroad. They give us the same rates they have in Georgia. They do not have any such rates as the Atlantic Coast Line does. We have a sure enough railroad in the Georgia, Florida & Alabama."

It is a good railroad (Tes. p. 77).

"Q. But I understood you on your direct testimony to say that there weren't any logs shipped across this imaginary line because the rate was too high, and now you say you do ship them from Florida to Georgia?

"A. I meant the Coast Line. We have the Coast Line here on trial. That is what I was referring to.

"Q. You didn't specify which one, you said broadly you [fol. 526] could not ship them across this imaginary line.

"A. This is the Coast Line."

As to the difference in the rate that the Coast Line charges across the imaginary line and the rate that the Georgia,

Florida & Alabama charges across the imaginary line for equal distances, the Coast Line Rate on a 50-mile haul, we will say, is $25; and I think the Georgia, Florida & Alabama on a 50-mile haul is $20.50. Under that rate the Georgia Florida & Alabama hauls the logs; we do not haul them. However, we don't haul any a distance of 50 miles on the Georgia, Florida & Alabama, it runs around about 20 miles or 25 miles. The rate for 20 or 25 miles is about $15. The rate on the Coast Line for 20 to 25 miles would be $17.50 to $20, somewhere in between that.

[fol. 527] It runs 20 miles to 30 miles, $17.50. But the Georgia, Florida & Alabama is a short line railroad and they get 20 per cent more than any other railroad. I get a cheaper rate over the Georgia, Florida & Alabama than over the Coast Line for an equal distance, although the Georgia, Florida & Alabama is a 20 per cent higher rated road. As a matter of fact, practically all we ship are blocks. We ship a few logs (Tes. p. 79). I understand that the block rates are involved in this proceeding, and there is not a bit of difference in the world in hauling logs and blocks because you can saw them up at your mill and saw blocks out of them the same as in the woods.

"Q. Then why don't you ship logs?

A. We may do it if we get the proper rate.

Q. I asked you if blocks are involved in this proceeding.

A. No, I do not think they are.

Q. And you say you ship entirely blocks, and not logs?

A. Yes.

Q. Is not your rate on blocks on the Seaboard Air Line lower than the rate on logs on the Seaboard Air Line?

A. I don't know. No, I don't think it is. I think it is the same thing."

"Q. If the only rates involved in this complaint are the log rates and you ship only blocks, what benefit would it be to you if the rates on logs were either reduced or increased?

[fol. 528] A. It would have a whole lot to do with me if these rates were all equalized, and to do that one thing, in justice to each one, and that would be a reasonable rate. (Tes. p. 80).

Q. Would you accomplish your purpose by raising the log rates in Florida?

A. No, sir, I think they are high enough now.
Q. That would equalize them, wouldn't it?
A. Put the others down to it."

I did not try to express any judgment as to what were reasonable rates on logs. The present Seaboard Air Line rate that we are paying in Florida is even above a reasonable rate, or about a reasonable rate, and the Georgia rate that we have at the present time is, I consider, above a reasonable rate, as too high, a little too high. I am talking as a shipper, not talking as to what the railroad ought to have to make revenue (Tes. p. 81).

What I ask the Commission to do here is to establish what are just and reasonable rates on this commodity as between points on the Atlantic Coast Line in Florida and points on the Atlantic Coast Line in Georgia; that is what I want. I am not expressing to them a judgment that the rate for 50 miles ought to be this and for 75 miles ought to be that, but that they should arrive at what are just and reasonable rates from the evidence and establish such rates. The interstate rate as I see it—it is unreasonable because there is [fol. 529] absolutely no business being done under it. I mean by that that the test of a reasonable rate, or that one of the tests of a reasonable rate, is whether or not shippers can use it. I do not think that these rates conform to that test—the present rates we have got now are fully high enough, or too high.

I can not and do not ship any logs over the Atlantic Coast Line Railroad from the State of Florida to Bainbridge, Ga.

(By Mr. Cotterill:)

"Q. If the rates on logs within Florida were to be advanced and made as high as the rates on logs from Florida to Georgia charged by the Atlantic Coast Line Railroad, would you be in any better or different position than you are now?

A. And I had to get my timber supply from that source?
Q. You can answer the question, sir, any way you wish.
A. Well, if I had to get my timber supply from that source I would just quit business and get out.
Q. In other words, sir, if the rates were to be advanced within Florida to the level of the now existing rates from

Florida to Georgia, you would not be aided in any way whatsoever, would you?

A. Not if I had to get my supply of logs that way—I couldn't navigate. I couldn't go ahead.

Q. And there would be no movement from Florida to Georgia on such rates?

A. I don't think so.

Q. Then the only relief that could be accorded that would give you any better position than you now occupy would be [fol. 530] to reduce the interstate rates from Florida to Georgia to a reasonable figure?

A. Yes, sir.

Q. And unless that be done it makes no difference to you what the rates are in Florida?

A. If a reasonable rate across the line, the interstate rate, is put in, it would not make any difference to me."

All that I have said of Thomasville is equally true of Bainbridge. I am interested in a plant there at Thomasville (Tes. p. 84) that ships blocks out of Florida over the Atlantic Coast Line and we have a block rate that differs from the log rate and the block rate is the cheapest.

As to whether we would be affected by what the log rate is to Thomasville from Florida, we would be affected, for if we had a reasonable log rate across there we would buy logs, especially at Thomasville—we have been buying logs—so we could saw the different lengths up at the mill, but we have not been able to buy logs across the line (Tes. p. 85).

As to whether there is any considerable volume of timber which is not already controlled on that line south of Thomasville, there is quite a lot of scattered stuff like we use. By that I mean that we must, that is, a crate and box manufacturer, especially when the farmers have lost everything they have in cotton, they have to sell a little timber to pay their taxes. A farmer will have 10 cars or 5 cars up and down the line of the railroad, and he cuts that and we buy [fol. 531] it. In other words, the timber that we might get on that line south of Thomasville in Florida would be a few logs that a farmer might get off his farm (Tes. p. 85). I don't know whether there is or is not any available body of land in that territory that has not been assumed or con-

trolled by other milling interests. We just buy it as it is offered to us.

Redirect examination.

(By Mr. Perry:)

I stated a moment ago that I didn't draw any logs from Florida from the Coast Line, from Florida to Bainbridge. I don't draw any because the rate is too high. I have no objection if we get a reasonable rate, interstate rate from Florida over into Georgia, the intrastate rate would have no effect on me. I mean by reasonable rate that the rate be made the same interstate as it is in Florida (Tes. p. 86). I do not intend to beg the question as to what is a reasonable rate. I might tell you, from your railroad earnings, it looks to me like $8.55 is a pretty reasonable rate, the amount of money the Coast Line is making, if you go by that. I am not attempting to urge upon the Interstate Commerce Commission that those rates applied in Florida on the Atlantic Coast Line Railroad are maximum reasonable rates for the transportation of logs. I don't think they are. They are a little bit low, and they might come up, and everything put equally up to the Seaboard Air Line rate (Tes. p. 87).

Examiner Brown: Mr. Perry, have you concluded with [fol. 532[your case?

Mr. Perry: Yes, sir.

Examiner Brown: It is understood that evidence is to be submitted on behalf of intervening carriers at this time.

Direct examination.

(By Mr. Thurtell:)

O. C. Abrams was called as a witness on behalf of intervening carriers and, being first duly sworn, testified as follows:

I am commerce agent of the Seaboard Air Line and have been in the service of that railroad for several years, with

over 20 years' experience in the freight traffic departments of numerous railroads in the Southeast (Tes. pp. 88 and 89). I think I am familiar with the rates on logs that are in issue in this complaint. Relative to the Seaboard Air Line's interest in the issues, there are many points in Florida and some in Georgia common to both the Atlantic Coast Line Railroad and the Seaboard Air Line Railway and obviously the application of the so-called Cummer scale published by the Atlantic Coast Line Railroad for intrastate application in its tariff I. C. C. B-2255, Supplement 29, affects the rates of the Seaboard Air Line Railway and for this reason the Seaboard Air Line Railway has filed a petition of intervention in opposition to this scale.

(Objection stated and argued.) (Pp. 89 to 96, incl.)

Examiner Hillyer: If the situation is clear to you now you may proceed with your witness, and if any questions are asked which are properly subject to objection, the objection may be considered.

[fol. 533] Mr. Burr: I would like to ask the Judge (Thurtell) this question: Your real interest in this case is to break up the so-called Cummer scale in Florida; isn't that so?

Mr. Thurtell: No, that is not so, but we do not want it extended into any territory served by the Seaboard Air Line Railway. That is the interest of the Seaboard Air Line Railway (Tes. p. 96).

The Witness: My Exhibit No. 2 is submitted as showing a comparison of various rates on logs, carloads, reduced to cents per 100 pounds. In column 1 is shown the so-called Cummer scale, which, it will be observed, is the lowest scale to be found and on the very lowest level and lower even than that prescribed by the Georgia Commission, but under suspension, as shown in Column 12.

(Objection.)

Examiner Hillyer: This exhibit No. 2 shows scales of rates on file with the various commissions, and with the exception of Scale No. 10, may have some bearing upon the reasonableness of the rates in issue, and it will be received. I think it is properly admissible for the purposes of comparison (Tes. p. 97).

(Argument—pp. 97 and 98.)

The Witness: I have not mentioned column 10 and do not intend to specifically. In columns 2 and 5 are shown rates arranged in 1915 at conference with the Railroad Commission of Florida and representatives of the Seaboard Air [fol. 534] Line Railway and the Atlantic Coast Line Railroad (Tes. p. 98). These rates represent Class P rates for a car of 40,000 pounds, then in effect, observing a minimum of $6.00 per car, and these low rates were induced to permit the movement of timber from small tracts which were not sufficiently large to warrant saw mill logging operations and which would otherwise go to waste, and by the further fact that it gives the small farmer some means of adding to his income during dull periods of the year, and the additional fact that the product of these short logs returns to the carriers for transportation in the way of crate material, and so forth.

Mr. Cotterill: I would make the further objection that reference to short logs or blocks be omitted. These rates are not in issue in this proceeding, they were excluded by the complainant.

The Witness: They are known as short logs. The rates apply specifically on logs of certain dimensions, not blocks. I will refer you to the explanation of the columns on the exhibit.

The reduced rates were published originally by the Seaboard Air Line Railway, effective February 1, 1916, in supplement No. 30 to Tariff R. R. 3097.

The rates shown in column 3 as published by the Atlantic Coast Line Railroad for interstate application are the same as were proposed to the Georgia Railroad Commission by the carriers and upon which hearings were had in September, 1921, and November, 1923.

[fol. 535] The rates shown in column 4, are the present day equivalent of rates prescribed by the Railroad Commission of Florida in its order 536, of December 16, 1916. The Seaboard proposed rates 35 cents per 1,000 feet higher and this meant rates for the shortest distance, about 117 per cent, and for the longest distance, about 107 per cent of the rates prescribed.

The rates in column 6 were originally published by the F. C. & P. Railway, and came to the Seaboard with the acquisition of that property in 1900. Our records do not

show the basis for the rates. These rates have application, however, only on logs on which specific commodity rates are not otherwise published. The rates shown in the other columns are fully explained in the exhibit.

These comparisons indicate clearly that the Cummer scale, in column 1, is unduly low and that the interstate scale in column 3 is not unduly high.

(Exhibit No. 2, Witness Abrams, being the document above referred to, was received in evidence.)

Cross-examination.

(By Mr. Cotterill:)

"Q. Mr. Abrams, when you use the expression that the charges within Florida referred to are unduly low, your whole thought in that regard is confined alone to the comparison which you have made of those rates and the others set forth on your exhibit?"

"A. Yes, by the comparisons I made I think they are unduly low."

"Q. Now, you have not indicated to us why it is that the [fol. 536] particular rates with which you make comparison are assumed by you to be reasonable themselves?

"A. I think so, sir, the explanation of the columns. I know that some of these rates were prescribed by the Interstate Commerce Commission and some of them were prescribed by the Florida Railroad Commission, some of them were proposed for publication and suspended, and finally cancelled by the Georgia Railroad Commission" (Tes. p. 102).

I am familiar with the circumstances in the Interstate Commerce Commission cases which I have cited, and I have read Mr. Wilby's testimony, the man who appeared for the city of Savannah, the traffic manager of the Bureau connected with the city of Savannah, who appeared for the Pierpont Manufacturing Company. That was an attack on the rates on logs from South Carolina points to Savannah by the Pierpont Manufacturing Company, and was participated in by the Southern Railway, represented by one witness, I think Mr. Geoghegan, and one witness, Mr. Wilby,

for the complainant, and that was the extent of the participation of carriers and shippers in that case (Tes. p. 102).

I am familiar in a general way with Docket 11,414, the Southern Veneer case, mentioned in Exhibit No. 2. That case was an attack on rates from South Carolina points on the Seaboard Air Line Railway and the Atlantic Coast Line Railroad to North Carolina points on the Southern Railway.

"Q. Do you know whether or not in that case there was [fol. 537] tendered to the Commission an issue involving the determination of any question other than the question of whether or not combination of local rates should be made on logs or should the existing standard of local rates in that territory be used for joint linehaul movement, plus an arbitrary?"

"A. As I recall it there was some contention that the combination of rates should apply."

The rates that were stricken from my exhibit (Exhibit No. 2) were a tentative statement by Examiner Cummings. (Tes. p. 104).

As to how the existing Atlantic Coast Line rates on logs from Florida to Georgia compare with the log rate scale which the southern carriers proposed to the Georgia and Alabama Commissions, I think they are the same rates. They are slightly higher than the Georgia Commission found to be just and reasonable for application within Georgia. The question whether there are any producing points in Florida for movements of logs to destinations in Georgia, which are common to the Coast Line and the Seaboard Air Line can best be answered by the statement that there is not any movement out of Florida to Georgia over our line, and has not been that we know of to any extent. There has been a small movement, I believe, from Georgia into Florida (Tes. p. 105). There has been no movement from Florida into Georgia that I have been able to develop.

Under description No. 11, which corresponds to my column 11, the rates which I have shown are those which [fol. 538] were prescribed by the Interstate Commerce Commission in Docket 11,414, otherwise known as the Southern Veneer Asso. Case, and they were prescribed for single line application. That case did not involve only

joint line movements from the Atlantic Coast Line and the Seaboard Air Line origins to destinations on the Southern Railway, because the Commission in that case prescribed a base scale for single line application. As to what single line movements were involved, we had a movement on the Seaboard Air Line into Charlotte, I think, or Rutherfordton. I know we had a movement over our line. The figures shown on that exhibit are those which were prescribed for single line application. There is no chance that I have shown the rates fixed for joint line application because the Commission prescribed a 2-½ cent differential to be added to these (Tes. p-. 106-107). As to whether I am sure that these rates have not already the 2-½ cents added in, of course it is possible that a mistake has been made, but I don't think so.

The Seaboard Air Line Railway does not always make the same rates for the same length of haul on the same commodity over all parts of its systems. If there were shown to me a mere difference in rates on a given commodity for a given length of haul, charged by the Seaboard Air Line in one instance, as compared with another, I would say ordinarily that that difference would be justified by some particular reason, that there would be some reason for it. There might be different conditions under which two rates were made, and different characters of conditions to which they were made to apply.

[fol. 539] As to what, if any, investigation I have made as to the conditions of movements under which these rates within Florida here discussed apply, viz, the Cummer scale (Tes. p. 107), or the Altantic Coast Line Scale—well, I don't know definitely, but I do understand from a long experience in this territory that logs are moving over the Atlantic Coast Line under this Cummer scale.

"Q. Do you know anything of the conditions under which they are moved?

"A. What do you mean?

"Q. I mean transportation conditions?

"A. Do you mean the movement in solid trains, or in separate carloads?

"Q. That may be one.

"A. No, I would prefer that the Coast Line witness testify as to that."

I would like to leave it to Mr. Perrin to tell you about that movement, to speak for itself, whatever he shows in connection with the Cummer scale. When I condemned the Florida rates as being unduly low I would not admit that I had failed to make any investigation, or to inform myself as to the conditions under which those rates apply (Tes. p. 108), but I did not make any particular investigation. I know in a general way, as I have stated—I have been in this territory practically all of my life, I have worked for the Atlantic Coast Line, I worked for the Plant [fol. 540] System, and I understand in a general way that most of us get our information, that there are logs moving under the Cummer scale. As to whether there is something peculiar and differentiating in these movements, I suppose there is something peculiar which will be explained to you.

"Q. You know there is something peculiar about those movements that acount for thid difference in rates, do you not?

"A. I suspect very strongly that there are conditions on that scale."

"Q. You understand that there are certain peculiarities surrounding the handling of this traffic in Florida to which these particular Florida rates apply, do you not? (Tes. p. 109.)

"A. No, I do not understand that. What I had in mind was that there were some peculiar conditions leading to the establishment of this scale. Now, as to any unusual conditions under which this stuff moves, I do not know."

I made no investigation whatsoever as to that particular feature of the transportation conditions, no. I told you to begin with, on the basis of these opinions, I feel that the rates are unduly low.

"Q. But I thought you agreed that a mere difference in rates did not establish the fact that a higher rate was unreasonable, or a lower rate too low, unless you know something of the circumstances and conditions under which those rates were established?

"A. I do not believe I follow that exactly. You said if [fol. 541] there were different rates over different parts of the Seaboard Air Line, would there not be different condi-

tions which brought about those rates; and I said, probably that would be so.

"Q. Why do you say there is no difference in the case of these rates——

"A. There is no reason why I should assume it.

"Q. Why do you assume that the Atlantic Coast Line would be moved by different conditions than those influencing the Seaboard Air Line? (Tes. p. 111.)

"A. Because I have had a little something to base my assumption on in the case of the Seaboard Air Line.

"Q. Do you think, then, that the Atlantic Coast Line might make a difference in rates for corresponding lengths of haul on a given commodity, without any particular reason for making the difference, but that the Seaboard Air Line would always have a reason?

"A. I do not think any such thing.

"Q. Does not what you have said amount to that?

"A. No, sir; you may put that interpretation on it, but I don't."

I am not familiar with the circumstances of transportation and the rates on our line affecting movements on behalf of the Roux Company at Lake Garfield, or R. L. Dulaney Sons at Bradenton, nor am I familiar with the conditions which led up to the establishment of some particular commodity rates; no, sir; I am not familiar with the trans-[fol. 542] portation conditions affecting movements to these particular people and places, no, sir (Tes. p. 111). I can have no answer as to certain rates on movements of the Seaboard Air Line for the Cummer Cypress Company, Otter Creek, and I don't know anything whatsoever of these rates, or the circumstances under which they apply, no sir, nor the Gress Manufacturing Company at Jacksonville. Of course, we have lots of rates, we have a log tariff there, we have lots of rates that are less than the scale, but they were put in for particular reasons, competitive reasons, and others, transportation circumstances, generally, competition and general transportation conditions. It is a matter of fixing a rate that we can probably get a little money out of and get some of the business that is moving (Tes. pp. 112).

"Mr. Burr: I wish to correct the witness, when he said a while ago that the short log rates he testified to were prescribed by the Commission. I want to correct him to say that they are agreed rates between the Seaboard Air Line and the Commission of Florida. They have exhibited an order to me, but it does not cover the short logs that I am referring to, as far as I can tell from an examination of it. There are two pages of it.

"The first point that I take issue with Mr. Abrams on is the statement that he made to the effect that the Commission issued an order on these column 5 rates. Column 5 on this exhibit, are the short log rates. That was arrived at [fol. 543] by agreement with the Seaboard Air Line, partly by correspondence, and possibly partly by conference. The order which he has there and which he is relying on and which reads, logs six feet and over, was at the request of Mr. Capps, also, because Mr. Capps wanted to get Doyle's measurement in on logs. The only difference between what Mr. Capps asked the Commission to do and what is included in the order is a little difference in the scale" (Tes. p. 113).

[fol. 544] "The Witness: Yes, sir. 35 cents per 1,000 feet less than Mr. Capps asked for. I didn't say anything about column 5 in connection with the order."

"Mr. Burr: No, but you said column 5, and column 5 refers to short logs."

"Examiner Brown: The order of the Florida Commission is not in evidence so it cannot be considered in any way. That would be the best evidence as to what the Florida Commission did. It has not been presented here as an exhibit."

"Mr. Thurtell: Mr. Examiner, this all happened some time ago. It is quite possible for an error to arise in the matter of how these rates came into being. Mr. Abrams has there a copy of an order issued by the Railroad Commission of Florida which he believed to be applicable, and the order which eventually produced these rates. I think we ought to do this; if the Examiner will permit us, within ten days we will file with the Commission, giving a copy to Commissioner Burr, and any others who want it, a copy of this order which we are not now prepared to file as an ex-

hibit. Comparison of the order with the present rate might possibly lead to the correct conclusion as to how these rates came about, and whether or not they correspond with the rates shown in these columns" (Tes. p. 114).

"Mr. Burr: I have no objection to his putting that in there. The only thing I questioned was the impression that he gave that the Commission prescribed these rates that he is referring to, the inference being that the Com- [fol. 545] mission on its own initiative did that—you could draw no other conclusion from it—when, as a matter of fact, his own vice president asked for the rate, and the only difference in what he asked and between the order, is a small difference in the rate itself, and as to short logs, that was entirely by agreement, and I don't want the impression created here that it was done, and perhaps done over the protest of the Seaboard Air Line Railroad."

"Examiner Brown: The position of the Florida Commission is clear, and the order so far as it is concerned, will speak for itself" (Tes. p. 115).

(Witness excused.)

J. C. Jackson was thereupon recalled as a witness and having been previously sworn, further testified as follows:

Cross-examination.

(By Mr. Cotterill:)

I own and operate a mill in Valdosta. We specialize in flooring and my principal market for flooring is in the East. Aside from the other mills, our main competition on yellow pine is the Alabama mills on the flooring. In addition to that, for the last year we have had to meet the competition from the northwestern markets—Pacific Coast competition through the Panama Canal. Our existing source of supply on logs in Georgia is nearly exhausted. I have been dickering for some stumpage over the line in Florida.

"Q. Now, you say if your rate, or if the freight rate of the Atlantic Coast Line Railroad to Valdosta, from some shipping point near that stumpage, were to be reduced, then it would make the purchase of that stumpage by you pos-

[fol. 546] sible, and its use in the manufacture of flooring possible, as well?

"A. Yes, sir."

If the freight rate of the Atlantic Coast Line Railroad from a convenient shipping point in the vicinity of that stumpage to Valdosta were not to be reduced, but all of the rates of the Atlantic Coast Line on logs in the State of Florida were to be increased, the freight would be so heavy—we could not pay over $4 in the manufacture of pine pogs; that is the point exactly. I mean by my testimony that if I could obtain a reasonable rate from the stumpage area that we are speaking of in Florida to Valdosta, then in that event I could buy that stumpage and ship it to Valdosta; that is it (Tes. pp. 117-118). But apart from that, the matter of the general level of Atlantic Coast Line rates on logs throughout the States of Florida hasn't anything to do with our buying and marketing in the East. We could not buy that stumpage if the Atlantic Coast Line rates on logs all over the State of Florida were increased. It would not help me a bit; and that would not in any manner induce me to ship from Florida into Georgia; but if Jacksonville or the coast markets have a better rate than we have, then of course they are able to buy this same stumpage at the same distance, while we are prohibited. That is the point. If the other rates were put up in proportion to these rates for Jacksonville, on the 60 miles to Jacksonville, and a 60-mile haul to Valdosta, we would be on a parity so far as the freight rate is concerned. But the [fol. 547] rate is too high from the tract I spoke of, we could not buy that on the present rate (Tes. p. 118). If the present rate stood to Valdosta, and the Atlantic Coast Line rate to Jacksonville were increased, I would not buy that stumpage, on this market, but it might prevent the other fellow from buying it. If the rate was put up on him it might prevent him from buying it, and we would stand an equal show to get it at some later date.

(By Mr. Adair:)

"Q. Mr. Jackson, then the fact is that what you want to do is to depress the price of stumpage, is it not; isn't that the long and short of it?

"A. Depress the price of stumpage?
"Q. Yes, sir.
"A. No, sir."

The Jacksonville man could afford to go in there and pay more for this stumpage than I could afford to pay; that is true. And the reason why I could not buy this stumpage is that I could not pay the heavy freight (Tes. p. 119). If the Jacksonville man's rate was the same as mine I could not buy it; neither could he. Then the price might come down, and one of us might be able to buy it.

I have been conducting a saw mill business in Valdosta proper for about two years. We have been operating 20 miles above here for three years. Our annual cut is about 10,000,000 feet at this point. I have another mill at Talla- [fol. 548] poosa, Georgia, where I cut about 20,000 feet a day, or about 5,000,000 feet a year. We sell our output through brokers very largely, brokers and lumber yards. I think—well, I do not know definitely whether or not any of the Florida mills make any flooring that comes in direct competition with me. I think the Cummer Lumber Company in Jacksonville makes flooring. I am not positive. They used to make it, I know, a few years ago, but I don't know what they are doing now. I don't feel it. If somebody was ready to swear that the Cummer Lumber Company quit making flooring some five years ago I would not contradict it. Our main competition is primarily Alabama, Louisiana and Mississippi. All those flooring mills of course we have to meet competition with them. Last year the Pacific Coast competition was very keen. Whenever the eastern market has been in any way good in recent years, anything that would incline to elevate the price of our southern products, that would immediately bring about the competition from the Pacific Coast. That has been the thing that has been keeping me awake at nights (Tes. p. 121).

"Q. Now, may I inquire of you with respect to this 190,-000,000 feet of timber that you spoke about on your direct examination—who is the owner of that timber?
"A. Mr. Montague.
"Q. Isn't that the tract known as the Ottinger and Russell tract?

"A. No, sir, it is not—now, I can't tell you that, it may [fol. 549] be. I don't know much about the name. Isn't that tract down near Cross City? I don't know, sir."

"Q. In what counties is that 190,000,000 foot tract—in Florida?

"A. It is in Hamilton, and I don't remember the other two; it is in three countries. It lies in between Lake City and Jacksonville and a little north of Lake City."

"Mr. Perry: If your Honor please, it may or may not be against the interest of this witness to tell exactly where that timber is located. He doesn't have to do it if he doesn't want to."

"Examiner Brown: The witness need not disclose any information which would be detrimental to his business; he need not disclose any trade information. You may proceed with the examination."

"Q. Do you object to stating how far that timber is in railroad miles from Valdosta?

"A. It is between 60 and 80 miles.

"Q. Is that via the Atlantic Coast Line?

"A. Yes, sir, that is via the Atlantic Coast Line.

"Q. Do you object to saying by what line of the Atlantic Coast Line those logs would move?" Tes. p. 122.)

(Objection and argument thereon.)

"Mr. Adair: It has been attempted to be shown that this particular tract of timber, which is the subject matter of this discussion—that this gentleman here, Mr. Jackson, is [fol. 550] being discriminated against in the purchase of it."

"Examiner Brown: Do you object to answering that question, Mr. Jackson?"

"The Witness: Yes, sir, I object to answering the question."

"Examiner Brown: For what reason?"

"The Witness: I do not care to disclose the exact location of the timber, a tract of that kind—there are a good many people after a tract of that kind. I may be talking to my competitor; I don't know."

It is in Hamilton County is as near as I would like to tell you. I realize that there is no through line, I think that is

what you are driving at. It is a branch line, and we would have to build some track to reach the Coast Line from part of it. I stated that the timber laid between Jacksonville and Lake City. It runs up within 40 miles of Jacksonville, so Mr. Montague told me. I have not been on this timber. I have only the cruise of the timber, an estimate. It runs up within 40 miles of Jacksonville, Mr. Montague told me that last night, and covers 50,000 acres of land, approximately. He did not tell me whether it is in a solid body. It is pretty well assembled. The timber that at one time I contemplated purchasing at Cross City was only a small tract, farmers, no big tracts there, only small tracts. I have now concluded not to purchase that. The rate is too high, we can't afford to buy it, we can't ship it here, and [fol. 551] pay $8 freight (Tes. p. 124). There was involved in that transaction only about 400 or 500 acres in the tract we were figuring on, but we intended to go on and see what we could get down there, we investigated the rate, and had the Atlantic Coast Line quote us a rate, and we dropped the matter entirely. We had in actual contemplation the purchase of 400 or 500 acres, yes, sir, a small tract. How much timber was on that I don't know. We didn't go to see about it. A party wanted to sell it, we told him we would investigate the freight rate, and we found it was so high we couldn't undertake it. That was about a year ago.

I have a mill at Tallapoosa, 64 miles west of Atlanta, on the Southern, on the Atlanta & Birmingham branch of the Southern Railway, it is just beyond Bremen, where the Central crosses the Southern (Tes. p. 125). It is not on the Atlantic Coast Line. I don't think we have any Atlantic Coast Line in that section at all. Atlanta would be the closest point, if it reaches Atlanta.

"Mr. Price: I would say Montgomery would be about the closest."

The Witness: It is, from the Florida line, about 320 or 325 miles. I have never hauled logs that distance from Florida. About 50 miles is our limit to haul logs on interstate rates, on any of our rates. The important part of our freight rate is our log rate, and not the outbound rate to eastern destinations. Our outbound rate is on an equality [fol. 552] with all other rates in this section. It is the in-

bound log rate beyond thirty miles. We handle a cheap commodity, yellow pine, the best average of that will run under $35 on this market, and if your freight runs over $5, with five or six dollars stumpage, manufacture is prohibited, and for that reason we confine our timber purchases under these present rates to about $4, stumpage usually $3, that is 20 to 30 miles. If we had this Coast Line rate we could haul logs for 160 miles for the same money that the other people are hauling 120 or 130 miles for, and it would cost us $8 on our interstate rate. In other words, our hands are tied on all stumpage beyond 40 miles of Valdosta, and beyond the Florida line, as the rates go in that direction.

Important eastern destinations for our lumber are Philadelphia and New York.

"Q. Let us take Philadelphia. How would the movement be under present conditions, from what point in Georgia would your logs move in to Valdosta?

"A. Well, at the present time we are getting our logs on the Georgia, Southern & Florida, there is nothing over 35 miles now."

I am getting it within a radius of 35 miles, but the timber is getting very scarce within this radius, and we are going to have to branch out or go out of business, and unless the lumber market should advance the log rates will have to be reduced if we are able to continue, our profits are very small now. We ship our manufactured product all-rail. Some lumber concerns buy logs within a radius of 30 miles [fol. 553] of Jacksonville, ship them into Jacksonville, and ship the manufactured product by water to Philadelphia—that is a normal movement (Tes. p. 127). That is done a great deal, but there is very little difference in the freight, that is on my class of stock flooring. The flooring rates are about the same, about 50 cents a thousand feet on flooring [fol. 554] cheaper, as I understand it. Our competition would be with the Jacksonville mill or with mills in other sections, about the same on flooring, because they usually ship all-rail, and if they don't the rate on flooring is about the same via the Clyde Line as it is all-rail from Jacksonville, very little difference. We have a broker in each city, a broker in Philadelphia and one in New York. The main competition which we have to meet today, the larger mills

at least, is the Pacific Coast. Now, the Jacksonville Lumber Company at Lockhart, Alabama, and Ritterville, Alabama, are the biggest manufacturers of yellow pine flooring in the United States, they really control the market. We add quite a little to the three inch flooring market ourselves. They control the prices so far as the south is concerned, but they tell us, and the lumber association tells us, that the main fight in holding the prices of the mills down is the Pacific Coast competition. That is the head of the whole reduction in price, that is what broke the market last winter, the Pacific Coast lumber was dumped right in there, and they sell fine, clear material, their timber is better than ours, it is free from defects, and so forth, and they go right in there on our prices, and meet competition. Alabama and the Pacific Coast have been controlling the prices that we have to meet in the east, and that is our principal market.

I am familiar with the issues in this complaint. The first I heard of it was about six months or eight months ago, in fact, I was instrumental in bringing it about, I presume. We felt the need of this expansion of the log rate. [fol. 555] That was the only log rate in existence we felt we could live under that we could use and make any money. We consulted the Atlantic Coast Line to know if they would not extend their Florida log rate into Valdosta, eliminating the Florida line. It is an endless track, there is no junction point, or anything, and we figured that they would put that rate into effect over here, and we were instrumental in asking the Commission to do it. I don't know that I have the refusal of the Atlantic Coast Line to extend the scale. Our point is we want the other roads to give us the rate. It is not only the Coast Line, but we need the rate from the Georgia, Southern & Florida, and the Georgia & Florida, all roads coming in here. I took it up with the Georgia Public Service Commission, not by myself, I had the assistance of some others. We discussed it, Mr. Simmons and our Company, and Mr. Harrell, a gentleman in the stave business here. There was a gentleman here for the Southern Saw Mill Company, Thomasville, I believe, representing the Southern Saw Mill Company, Mr. Farish, of the Southern Saw Mill Association (Tes. pp. 129-130). I am not sure now. I am not sure whether Mr. Farish was with us in that meeting or not, you had better cancel that assertion.

Mr. Simmons is the only one of those who had appeared here, and I heard his testimony that an increase in the Florida rates would be of no benefit to him at all except in so far as he wanted equalization, provided the interstate rate was the same price. Our position is different to that. [fol. 556] We need a low rate, we need a low log rate. If the Florida rate were increased, and there was no change made in the Florida-Georgia rate, it would help us a little to the extent of keeping Jacksonville timber purchasers out of our territory. They have such a low rate that they can go right in our back yard, within 30 miles, and we can't help ourselves. I am speaking of stumpage purchasers. That is the vital point of the saw mill, the ability to get stumpage.

"(By Mr. Adair:)

"Q. May I inquire of you, Mr. Jackson, who it is in Jacksonville that is coming up and trying to buy logs within 30 miles of Valdosta? (Tes. p. 131.)

"A. I don't know, sir, they are being bought. There was a tract bought in Jennings last week by some concern shipping the logs the other way, I don't know who it was.

"Q. It might be Jacksonville, or it might be Jasper?

"A. Any of those markets have a great advantage in the freight rate, they have the Florida intrastate rate against our interstate rate."

As a matter of fact I know that some Jacksonville interest recently attempted to purchase logs nearby Valdosta, in Florida, at Jennings, and there has been some hardwood logs, poplar logs, and cypress logs from Jasper. I attempted to buy them and couldn't reach them.

"Q. Who in Jacksonville was buying them, do you know?

"A. They had somebody buying for export.

[fol. 557] "Q. You don't know who it was?

"A. They claimed they were buying for export. I lost the logs. Anyhow, those logs went to the Jacksonville market. I don't know where this tract the other day of 5,000,000 feet went. That proposition I don't think was handled out of Jacksonville, I think it was handled out of either Lake City or Jasper or some of those points.

"Q. When you say it was Jacksonville then, you mean Florida purchasers? (Tes. p. 132.)

"A. Any Florida competition is what I mean."

Jennings is on the Georgia Southern & Florida. It is not on the Atlantic Coast Line. We do not have competition in Jacksonville on our flooring. We have competitors there and elsewhere at Florida points on the Atlantic Coast Line. We are not dependent on that market. They have an advantage in freight rates in bringing logs into their mill-points in Florida. If those rates were to be advanced between points in Florida it would relieve the advantage that the local Florida mill has.

That would be an advantage to us (Tes. p. 133). We would be in a better position if we were put on the same basis as the Florida manufacturer on timber within 40 miles of us. Otherwise the rate would be too high anyway. On timber within 40 miles, we can pay the interstate rate. [fol. 558] The Florida manufacturer has an advantage over us by reason of low rates on logs. Now, by whatever means that advantage may be taken away from the Florida manufacturer, if it were to be done, I would be in a better position then that I am now, yes, on Florida business—I would have a chance at the Florida business, whereas we have none whatever now. We want a chance at the Florida business, but we can live without it. I am bringing my needs here, those are so important that we can't evade it. We need a log rate, we can find a market (Tes. p. 134).

George F. Potter was thereupon called as a witness for intervening defendant and, being first duly sworn, testified as follows:

Direct examination.

(By Mr. Thurtell:)

[fol. 559] My name is George F. Potter. I am commerce agent for the Southern Railway System Lines, with headquarters in Washington, D. C. I have been with the freight traffic department for the past 11 years. I am reasonably familiar with the rates on logs that are at issue in this case.

I have prepared several exhibits to be used supplementary to my testimony (Tes. p. 135). The Southern Railway Company and the Georgia, Southern & Florida Railway Company are intervenors in this case. The Georgia, Southern & Florida Railway serves both Florida and Georgia. Its line extends from Macon to Jacksonville, the main line, and the division from Valdosta to Palatka, Florida. It intersects with the Atlantic Coast Line at some points in Florida as well as in Georgia. Whatever rates the Atlantic Coast Line may apply as to interstate traffic between Florida and Georgia will affect the rate of the Georgia, Southern & Florida (Tes. p. 136).

My first exhibit, which is Exhibit No. 3, is a comparison of the present rates on logs, to Valdosta, Ga., from Jasper, Fla. and Lake City, Fla., via the Georgia, Southern & Florida Railway and via the Atlantic Coast Line Railroad. The exhibit likewise shows the rate suggested by complainant.

It will be observed that on the basis suggested the rate from Jasper to Valdosta would be 2.1 cents per 100 pounds for 59 miles, while the present rate via the Georgia, Southern & Florida from the same point, where the distance is only 31 miles, is 4½ cents per 100 pounds.

A similar situation would exist from Lake City to Valdosta, Ga.

[fol. 560] We do not consider the present Georgia Southern & Florida rates unreasonable, and should the Commission prescribe the rates suggested by complainant interstate from Florida to Georgia via the Atlantic Coast Line, the Georgia Southern & Florida would be in the position of maintaining higher rates from Jasper and Lake City to Valdosta, than via the Atlantic Coast Line between the same points for greater distances. It seems obvious that the Georgia Southern & Florida could not hope to continue its present rates, and in reducing the rates between these common points the mileage scale of the Georgia Southern & Florida Railway would necessarily be affected.

My exhibit No. 4 shows a comparison of the scale suggested by complainant, that is, the Atlantic Coast Line Florida scale, with the intrastate mileage scale applicable in Florida, on the Georgia Southern & Florida Railway.

The Georgia Southern & Florida Railway extends 115 miles into the State of Florida, and the intrastate rates shown on this exhibit as applying on the Georgia, Southern & Florida are the Class P rates prescribed by the Florida Railroad Commission in its order No. 143 of February 16, 1914. These rates are the outgrowth, we might say, of rates which were prescribed by the Florida Commission—they are not the identical rates, of course They have been increased and reduced in the same manner as all the rates in the southern territory.

[fol. 561] The class P rates prescribed by the Florida Commission, as explained by the caption on exhibit, applies intrastate only within the State of Florida (Tes. p. 139).

Exhibit No. 5 is merely to further demonstrate the low nature of the scale suggested by complainant, by a comparison with the present intrastate rates applicable on the Georgia, Southern & Florida Railway within the State of Georgia.

My Exhibit No. 6 is a similar comparison and shows the interstate scale from Florida to Valdosta, and from Georgia stations, that is, stations within the State of Georgia, on the Georgia, Southern & Florida Railway, to Lake City, Fla.

In connection with this exhibit, I might state that there has been a movement on this scale, and logs are now moving from Florida, to Macon, Ga., via the Georgia, Southern & Florida Railway.

I have made no comparisons, or even shown what the rates are from Florida to Macon, because the distance is materially greater than that here involved, and it would have been of no particular benefit, but the rates to Macon are relatively aligned, or are on relatively the same basis as the rates shown in my exhibit No. 6, from points in Florida on the Georgia, Southern & Florida Railway, to Valdosta.

My Exhibit No. 7 is another exhibit which tends to show the low nature of the rates suggested by complainant.

This exhibit also shows the present interstate scale ap-
[fol. 562] plicable on the Atlantic Coast Line.

The comparison of the Atlantic Coast Line interstate scale with the interstate scale on the Georgia, Southern & Florida Railway, and also the interstate scale applicable

on the Southern Railway, will serve to indicate that the present Coast Line interstate rates are not unreasonable.

Exhibit No. 8 merely serves to further illustrate the low nature of the rates suggested by complainant, by a comparison with the rates applicable on the Southern Railway intrastate in Georgia, intrastate in North Carolina, intrastate in South Carolina, and intrastate in Alabama.

The rates applicable on the Southern Railway in Alabama as shown in the last column were prescribed by the Alabama Commission.

My Exhibit No. 8, note 6, on page 2 states that the rates were issued in compliance with an order of the Georgia Railroad Commission. This is an error. It seems that our Washington office had no advice of the revocation of the Georgia Commission's order as testified to by Mr. Price yesterday. These rates which were prescribed by the Georgia Commission, and were published in the tariff, were suspended, and our tariff showed the suspension until January 1, 1927, but those rates are now of course, to be withdrawn from the tariff. Those are the rates which were prescribed by the Georgia Commission. I think the date on which those were published is already in the record. The rates shown in these exhibits are in cents per hundred [fol. 563] pounds, and many of them are published in cents per car, as shown by the exhibits, and in order to make the comparisons, have been reduced to cents per 100 pounds.

(Intervenors' Exhibits Nos. 3 to 8 inclusive, were thereupon received in evidence.)

Cross-examination.

(By Mr. Cotterill:)

My objective here is by certain testimony to establish the claim that it would not be reasonable to apply to the Southern Railway a rate level on logs the same as or approximately the same as that applied by the Atlantic Coast Line Railroad between points in Florida. I wanted to demonstrate, and I think I have, that it would be detrimental to the interests of the Georgia, Southern and Florida Railway, and the Southern Railway, to have the Commission prescribe an unduly low scale of rates interstate from Florida into Georgia via the Atlantic Coast Line.

The Southern Railway has accomplished a more or less complete revision of its log rates throughout most of its system, and has put them on a scale that is generally known as the Southern Railway log rate scale, but we have not made a complete revision (Tes. pp. 142-143). I am not prepared to state to just what extent that revision has been made, without reviewing the tariffs, but we have an interstate mileage scale on the Southern Railway which is shown [fol. 564] on my exhibits here; on this Exhibit No. 8 I have portrayed the general rate level on logs on the Southern Railway in the Southern States. Apart from that showing, I do not believe that on this exhibit I have fully pictured the general rate level on logs in the southern territory except on the Southern Railway. I have never personally made an investigation to determine whether the Southern Railway mileage scale if applied by other carriers throughout the South and throughout their whole system, would effectuate a general increase in log rates in southern territory.

I have not shown on my exhibits any rates charged by the Southern Railway that are less than the Southern Railway mileage scale. I do not mean to suggest to the Commission that I have shown here all of the log rates of the Southern Railway, the same as that mileage scale (Tes. p. 144). We have some log rates that are less than that mileage scale. I would not say numerous. Yes, we have numerous point to point rates which may be lower than that mileage scale.

"Q. Yes, and even as to the Southern Railway, your exhibit does not purport to show the level of rates on logs in effect over the Southern Railway?

"A. I think the scale does show the general rate level. We have numerous point to point rates which are less than the scale, but I think this portrays generally the situation on the Southern Railway."

[fol. 565] When these point to point rates are less than the mileage scale, it is generally because of very substantial movements, but not always. That is one of the elements, no doubt, that has been considered, the movement (Tes. p. 145).

I have not undertaken to make any investigation so as to inform myself as to the transportation circumstances and

conditions to which the Atlantic Coast Line's Florida log scale applies. I have assumed in making these comparisons, that the situations were similar. I think it is fair to assume that, in the absence of any showing that they are not, in the absence of any showing to the contrary it is fair to assume that the transportation conditions are similar (Tes. p. 146).

[fol. 566] Redirect examination.

(By Mr. Thurtell:)

The Southern Railway Log Scale referred to in my cross examination is founded upon a decision of the Interstate Commerce Commission in the Pierpont case; it is practically identical with the so-called Pierpont scale. As to the territorial application of the rates prescribed by the Interstate Commerce Commission in the Pierpont case, I am not familiar with the decision in that case; I merely know that the scale which we have is the Pierpont scale; or substantially the Pierpont scale. I spoke of the Pierpont scale; I understand that a scale as such was prescribed (Tes. p. 147-148).

C. D. CHANCELLOR was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

(By Mr. Thurtell:)

My name is C. D. Chancellor; assistant general freight agent of the Central of Georgia Railway. I have been in the employ of the traffic department of that railroad for longer than fifteen years, and I am familiar with the rates on logs which are in issue in this proceeding. The Central of Georgia business is largely intrastate in Georgia. The interest of our railroad in the outcome of this case is the far reaching effect if the Florida rates are extended into Georgia, the far reaching effect they may have on the Georgia rates intrastate, and also the Alabama rates, and the rates applicable from interstate points on the rails of the Central of Georgia (Tes. p. 149).

The Central of Georgia Railway intervened in this proceeding because it considers the rates now maintained by the Atlantic Coast Line Railroad for intrastate application [fol. 567] on logs within the State of Florida to be unduly and unreasonably low, and detrimental to its interests. If the very low rates in Florida are continued, and extended for application from Florida into Georgia, it is felt that these rates would possibly influence the Georgia Public Service Commission in prescribing rates for general application throughout the State of Georgia, and likewise would possibly influence the Alabama Public Service Commission in reopening the question of intrastate rates within the State of Alabama, with a view to making lower rates than those now in effect, which were prescribed by its order of April 29, 1925, docket 4136.

In other words, it is the far reaching effect that the continuation of the low Florida rates may have on the revenue of this company with which we are concerned.

It is my understanding that the presence of these Florida intrastate rates was seriously urged by the Georgia Commission as a reason for not enforcing its decision as to log rates in the State of Georgia.

Cross-examination.

(By Mr. Burr:)

I understand Mr. Simmons was the principal one who urged them. I don't know of any other of my own knowledge (Tes. p. 150.)

[fol. 568] J. A. STREYER was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

(By Mr. Thurtell:)

My position with the American Short Line Association is Traffiic Manager, in charge of the southern territory. The interest of the people I represent in the outcome of this pr-ceeding is:

The Georgia Public Service Commission asked the Interstate Commerce Commission to prescribe reasonable and just rates interstate over the Atlantic Coast Line R. R. from Florida into Georgia. The short lines represented by the Association, from past experience, realized that whatever is prescribed will ultimately have an effect upon their rates,

I have an exhibit here which I desire to introduce and I think it will be helpful to the Commission in arriving at a just and reasonable rate to be prescribed by them. The interest is purely a financial interest, because whatever is prescribed for the Atlantic Coast Line, we feel will seriously spread to the other trunk lines in Georgia, and will then reflect itself upon these short lines. There are short lines which are engaged in transportation between Georgia and Florida and my exhibit in its different pages may illustrate my point.

On page 1 of this exhibit, the first column shows the rates that are in effect today over the Georgia, Florida and Alabama Railroad, which operates from Richland, Ga., to Carrabelle, Fla., with a branch to Quincy, Fla., that are in effect interstate rates.

These rates when they were first put in over the Georgia, Florida & Alabama, applied per car of 30,000 pounds. Today they apply per car of 40,000 pounds, and the minimum was increased by that railroad in order to try to help Mr. Simmins of Bainbridge. Mr. Simmons wanted to [fol. 569] draw some logs from Florida. We had a per car rate of 30,000 pounds minimum, excess in proportion, and it was increased to 40,000 pounds and the rates remained the same. That is now a per car rate of 40,000 pounds, excess in proportion. This is the scale of rates that Mr. Simmons yesterday, I understood, said was a good scale of rates, and was perfectly satisfactory, at the same time saying that the Georgia Rates were entirely too high.

At this time I desire to call attention to column C on this exhibit. You will notice the Georgia rates are practically in every instance, these rates are higher than the present Georgia rates today. The rates I am talking about, I have already said that the minimum was 40,000 pounds, excess in proportion.

As to the next column, column B, that is the Georgia,

Florida & Alabama intrastate rates within the State of Florida. The minimum on those rates is 30,000 pounds per car, excess in proportion.

I desire to call attention to the fact that these rates, intrastate in Florida, were issued by the Georgia, Florida & Alabama Railroad, under protest, in compliance with Order No. 431 of the Railroad Commission of Florida.

Column C, I have already referred to as the intrastate rates in Georgia, over the Georgia, Florida & Alabama, a [fol. 570] minimum car of 40,000 pounds, excess in proportion, and this mileage scale of rates is generally applicable intrastate on the short lines in Georgia, which is Column C. Then columns E, F and G, cover the Florida lines.

Column E is the Tavares & Gulf Railroad scale, and the reference is shown on the second page of the exhibit.

Column F shows the intrastate rates in Florida, over the Tampa & Jacksonville, and the Alabama & Western Railroad now, formerly the Birmingham, Columbus & St. Andrews Bay.

Column G shows the intrastate rates applicable over the Marianna & Blountstown Railroad.

Column H is the interstate rates of the Marianna and Blountstown Railroad. In this column the rates are shown as applying in cents per 100 pounds.

The minimum per car on these Florida rates referred to in columns E. F, G and H, is 30,000 pounds, excess in proportion. Those three columns, E, F and G, are applied per car of 30,000 pounds. If I sought to contrast those rates with the rates in the first three columns where the car is a 40,000 pound car, I would have to increase each of those rates in columns E, F and G by one third. But the way the rates were published and applied, that is the correct way to show them, as they are shown in the tariffs.

On the third page of this exhibit is a comparison of the log rates in carloads, in cents per 100 pounds, intrastate in [fol. 571] South Carolina, over joint hauls, as between a standard railroad and a short line railroad.

At this point I desire to say this, that in the majority of cases, logs originating upon short line railroads are destined to points beyond the rails of those railroads. Now, I recall that when the 40,000 pound minimum was established in Georgia, for instance, it was with a view of the lines—it

was first established, if my recollection serves me, by the railroad that received the outbound products from a certain large manufacturer, and the Georgia Commission held a hearing and prescribed the 40,000 pounds, and it was based upon the theory that the carriers would receive an outbound haul upon the manufactured product. Now, that is not true in all cases, and in the majority of cases, with the short line railroads. These logs leave their rails and they very seldom see anything in return in the way of a manufactured product. I wanted to make that clear. So, therefore, the majority of the logs that are handled by these [fol. 572] short line railroads is joint traffic. That is, as a rule it is a haul between a standard railroad and a short line railroad, and I have brought this exhibit to you here for the purpose of showing a comparison as to the present rates in South Carolina today, and the rates that were prescribed by the Georgia Public Service Commission in docket 15416, and that were subsequently postponed from time to time and finally cancelled on September 28, 1926.

The object of this is—it is my thought and belief that the Georgia Public Service Commission at that time considered these just and reasonable rates, or they would not have prescribed them.

The minimum weight in South Carolina is 24,000 pounds. I wanted to call your attention to that.

The next page of this exhibit is practically the same information, being a comparison of the single line scale in South Carolina, using the Northwestern Railroad of South Carolina, a short line railroad, and the reason I used this railroad was that the scale of that railroad extended more miles than any scale I could locate. They are practically all the same on the short line railroads.

The minimum carload weight used in column A is 24,000 pounds, and in column C it is 30,000 pounds.

Now, this is also a compariosn with the single line hauls over trunk lines as well as the short lines, as prescribed by the Georgia Commission in the order referred to in docket 15416.

[fol. 573] On page 5, the last page of this exhibit, is a statement that was prepared, and which was submitted as an exhibit at a hearing in docket 15416 before the Georgia Commission, and attached is a statement showing the per-

centage of the expense, the per diem and switching reclaim expense of 13 important short lines in Georgia, as to the total revenue received by each line. In other words, take the first railroad, the Macon, Dublin & Savannah Railroad, it handled 260 carloads of logs within five months, January through May, 1925. Their per diem on it was $638, their switching reclaim was $1,359.50. 44.3 per cent of the gross revenue went into that one item. Now, take the Georgia, Florida & Alabama Railroad, this is a railroad that had no switching reclaim. Most of their logs go off of the railroad, with the exception of a few to Mr. Simmons, at Bainbridge, so therefore they have no switching reclaim, but 33.46 per cent of the gross revenue received by this railroad was paid out for per diem. The statement speaks for itself, but bringing it down to the average revenue per car for this period for all of these lines, it was $17.05, and the average per diem reclaim and switching reclaim was $5.39 per car, leaving a net of $11.66. I should say it does not leave a net, it leaves a gross rather than a net revenue, deducting per diem and the switching reclaim. It leaves us just $11.66 to pay all the transportation expenses incident to this traffic. That is what we get out of it. Out of that [fol. 574] we haven't got anything to give away. In fact, the short lines think that the present rates on logs—and I am speaking of the short lines in Georgia at this time—are low, and we have hoped to get an increase from time to time, but up to the present time we have not been able to get an increase in these rates.

We hope that this exhibit will be of some benefit to the Commission in arriving at a just and reasonable rate to apply. As I have said before, anything that is applied in Georgia over the Atlantic Coast Line, will, we are fearful, spread to the other trunk lines, and in that way reflect itself upon the short lines in Georgia.

Examiner Brown: Exhibit No. 9 will be received in evidence.

The Witness: The first page of Exhibit 9 should be corrected and in the second line of the title, to show "intrastate" instead of "interstate."

Q. I am not sure that the record is entirely clear as to how these rates apply in columns A to G inclusive, whether

in cents per car or otherwise. The basis is not shown. You have stated that column H is cents per 100 pounds, but I am not sure that the testimony is clear as to the other columns.

A. These are in cents per car of 40,000 pounds, so far as column A is concerned; column B is 30,000 pounds minimum; column C, 40,000 pounds; column D, 40,000; columns E, F, and G and H, 30,000 pounds; excess in proportion.

Q. And those are all the rates in cents per car?

A. All rates in cents per car except the last column, which is in cents per 100 pounds.

[fol. 575] Most of these short lines are not lumber tap lines. We have only two lumber tap lines in the South (Tes. p. 159). They are not included in this exhibit. One is the Alabama Central Railroad and the other I have forgotten the name; it is not a member of our Association. The Alabama Central Railroad that I referred to is more of a coal carrying line now than a lumber line. It was originally a lumber line. Lumber does not furnish the principal traffic for these lines.

Cross-examination.

(By Mr. Cotterill:)

Referring to sheet 5 of my exhibit No. 9, the second column under the heading "revenue," that is the revenue derived by the particular railroad on all logs which it originates. If they deliver any, it is all included. That is the total revenue that these railroads receive upon logs handled by them.

In other words, what I have done is to show the total revenue, including that which may be derived from local movements, as well as that which is derived from joint haul movements. I do not undertake to show anything, except what this exhibit demonstrates, and that is 13 railroads within the State of Georgia, short line railroads. Here is the percentage of switching reclaims and per diem, and the gross revenue received by each of these railroads on logs whether they were handled one mile, or 100 miles, or on joint or local hauls, and the total is 31.6 per cent of all of [fol. 576] them, and that yields $5.39 per car, and if you deduct that from $17.05, it leaves you an average of $11.66.

Now, that is all the logs we handled, whether on joint haul or any other way.

The rates which are shown in the preceding four pages of my exhibit would yield the figures shown on my sheet 5, except as to some of the joint hauls it would probably yield less; if it was a joint haul we would receive less because there is a deduction of combination rates within the State of Georgia. There is produced certain average earnings lower in amount than the earnings produced by the rate schedules shown on the first preceding four sheets, in respect of joint traffic, to the extent of 10 per cent, but I have already said in my direct testimony that the majority of the logs were joint haul traffic over these short line railroads. On the combination rates there is a deduction, of course, but these figures on sheet 5, regardless of how we get them, are the actual amount earned by these railroads on logs. These are on all logs from all sources under the present rates.

"Q. And those present rates are not necessarily even the rates shown on your first four sheets of your exhibit?"

"A. Well, the present rates—what do you mean?"

"Q. What you have shown on sheet 5 as earnings?"

"A. Sure."

"Q. Including in part divisions of some other rates than [fol. 577] those which you have shown?"

"A. Well, Mr. Cotterill, I have tried to make it clear that there is a deduction on combination rates of 10 per cent in Georgia, so therefore, it is obliged to be these rates less 10 per cent."

"Q. Suppose there be specific point to point rates for local movements on some of these lines which are less than the rates shown on your first four sheets, that would be reflected in the earnings, would it not?"

"A. Well, there are very few of them on these short line railroads" (Tes. p. 163).

The Macon, Dublin & Savannah Railroad is 92 miles long. This line does not invariably charge the local mileage scale for any movement of logs between origin and destination on its line.

I would not say that in all probability every one of these short line railroads shown on my page 6, even as to local movements as between points on its own line, published spe-

cific point to point rates which are less than the mileage scale indicated upon the other sheets. I would not say that most of them do. I know one of them does. Well, I don't recall just now—I recall one, that is under very peculiar conditions. Nothing peculiar, only this; on this railroad the equipment is furnished by the shipper, and moves in [fol. 578] large lots, and another thing, they are under contract to give return tonnage, for every three cars of logs, one car of lumber.

As to what considerations determine the measure of particular log rates, I can only say that I was traffic manager of the Macon, Dublin & Savannah for 15 years, and general manager for three years, and during that time I didn't make a special rate on logs. This came along after my administration. It is uncommon to find an entirely different level of rates where there are train load movements than would apply on straggling movements from one origin to another under mileage scales, so far as these short lines that I am testifying about are concerned, and very frankly, Mr. Cotterill, I think the practice is a very bad practice. I think if the shipper is going to furnish his own equipment, he could probably get a locomotive and get trackage rights.

"Q. Suppose it is not done that way, suppose the shipper furnishes the equipment, operates the terminal services at both ends, and is operating a daily shuttle movement between one point and another, day in and day out, and is furnishing thousands of carloads, under those circumstances, whether it be a short line, or a trunk line, isn't it your observation that different rates are generally made than under these mileage scales which cover movements of an entirely different character?"

"A. Well, you know I know very few of those rates that are made."

[fol. 579] As to whether there is something special about every one of them, though, where they exist, I don't know what you mean by something special. I presume that the traffic manager takes into consideration the various phases of handling the traffic. I am not going to say—I think that is left up to the individual traffic manager as to the rates he may make. As to whether special rates on logs are today made and have been made under some such circumstances, I

will not go that far. I will go this far, that I know of only one railroad that has done it. That is all I know in fact. There may be some point to point rates that are less than these mileage scales. At first, you were talking about the regular movements from local railroads, and now you are talking about point to point rates, a different proposition, where there may be a joint haul. I would not say that, whether it be a single line haul or a joint line haul, the whole rate structure on logs is honeycombed with individual rates made with reference to particular operating conditions. There may be some. Now, Mr. Cotterill, you probably have a wrong idea. I have brought here the rates that in many cases are prescribed by the State Commissions, which are the maximum rates, and I presume that the Interstate Commerce Commission if they see fit to prescribe rates applicable between Florida and Georgia, will prescribe maximum rates. I brought this here hoping to be an aid to them in arriving at a just and reasonable rate, not with any view [fol. 580] of covering up anything, but simply to show the scales of rates. They know as well as I do that on joint hauls in Georgia there is a percentage deduction. There is no percentage deduction on the interstate rates. Those rates are just as they are shown. It was not my thought to aid the Commission in determining maximum rates. I presume they are going to prescribe the maximum reasonable and just rates. I hope they will not prescribe minimum rates, I will say that to you. I hope they will prescribe the maximum rates, and I am sure they will make them remunerative. I am not in favor of minimum rates being prescribed on any railroad. As to this item of per diem and the switching reclaim; per diem is the amount of money paid for the hire of a freight car per day. The switching reclaim is a claim that is allowed the delivering carrier within the switching limits say of a certain town for handling a car to and from the railroad either receiving or delivering the traffic to the industry to which the shipment is forwarded or consigned. The reclaim is not a credit. The per diem is a sum of money which a short line railroad pays to a carrier, and the reclaim is a sum of money that a line pays to the carrier for delivering cars to the industries on another line in the same city, only in the same city. It is not the absorption of a switching charge. For instance,

a car going locally off of a railroad say at Macon, Ga., consigned to the Case-Fowler Company at that point, the ship-
[fol. 581] per has to pay the switching charge out there, that is local, and he pays it to the railroad, and then in order for us to get that car to him we have to allow them so much per diem reclaim to give them time to get the car out there and back, because the switching charge is extremely low. When one railroad allows another a switching reclaim it is in order that delivery may be effectuated on some carrier other than the originating line. It simply is a sum of money deducted from the local rate of the originating carrier, and paid by the originating carrier, but it does not constitute a division of rate. I do not consider it a division at all, because the rate applies to any point within the city of Macon, or Valdosta, or Jacksonville. In the ascertainment of the figures shown under my column "Revenue" I got those figures, just from waybills. It purports to be gross revenue. That is the whole amount of the freight charges collected from the shipper. The source from which I ascertained the amount of money deducted for the switching re*l*caim was the auditor's office. I asked him what these columns indicated, for the per diem paid, for the *siw*tching reclaim that was allowed and paid, that is all. Now, he has a record of those items. The per diem settlements are made at various times, as a usual thing, once a month. Some of the switching settlements are made once a week, and some of them are settled once a month. In that sense the per diem is relieving the common carrier of the ownership and responsibility
[fol. 582] of supplying the equipment with its own capital investment, but it applies to the short lines; the short line usually has not money with which to purchase the equipment, and again, as to logs, it is my own personal experience that some of the short lines cannot afford to buy the proper equipment for the handling of logs, or the equipment that is desired by the shipper, because very frequently they desire gondola cars, and they can't afford to buy those cars for that service alone. I won't agree that this item of per diem is simply a sum of money which a given carrier elects to pay in lieu of making a capital investment of its own in operating facilities, because a given carrier does not elect to pay it any more than if you were renting a house you might

elect to pay $1. We have a choice between furnishing the car and paying per diem on it. Well, we do not consider that a relief at all from capital investment.

(Witness excused.)

Examiner Brown: Mr. Thurtell, does that conclude the testimony for the intervenors that you represent?

Mr. Thurtell: It concludes the testimony for all the railroads represented by me (Tes. p. 173).

Exam. Hillyer: Mr. Reporter, let the record show that after considering the statements of position by counsel for the Atlantic Coast Line, and for various Florida shipping interests, I am of the opinion that the Atlantic Coast Line should proceed first with its testimony. This position is taken on account of the statement by counsel for the Florida interests, Mr. Cotterill, that he is not attempting to introduce proof as to the measure of the Florida-Georgia rate at this time. He has been called upon to produce such proof, if he has any, and he has been told that in case he wishes to introduce any rebuttal testimony, he will be limited very strictly to rebuttal of that which the Atlantic [fol. 583] Coast Line introduces.

Is that statement understood by Mr. Davis and Mr. Cotterill?

Mr. Cotterill: It is certainly understood by us, your Honor.

Mr. Davis: Do I understand Mr. Cotterill to say that he is not a plaintiff in this case in any regard?

Exam. Hillyer: I understood him to say that he is an intervener in behalf of the defendant, and therefore, should follow the defendant in the presentation of his testimony. Is that correct, Mr. Cotterill?

Mr. Cotterill: I have indicated that we are an intervening defendant in the case throughout, assuming that the railroad defendant is a defendant in fact and is undertaking to defend the case.

On this question of proof as to the unreasonableness of the interstate charge involved, we have no interest in it at all, except as it may bear upon other issues in the case in which we are interested. I promise that we will not tender now or later any evidence in chief directed to the alleged violation of section 1. If there should arise in the case,

contrary to our hopes and expectations, any exigency which might suggest to us the importance of submitting any evidence on that subject, it will be done in strict conformity with the requirement that it be limited to rebuttal evidence.

(Mr. Cotterill then presented a motion to dismiss the proceedings on behalf of intervening lumber companiess, the [fol. 584] Wilson Cypress Company, Brooks Scanlon Corporation, Putnam Lumber Company, Cummer Cypress Company, Jacksonville Traffic Bureau, Manufacturers & Club of Georgia, the Savannah Traffic Bureau, the Georgia-Florida Saw Mill Association, Southern Cypress Manufacturers' Association, Southern Pine Association. The Railroad Commission of Florida concurred in the motion, but not as intervenor by reason of its statutory status in the case.)

"Mr. Cotterill: The grounds of the motion are two-fold and are set forth therein: First, that neither the complainant nor the supporting intervenors have submitted evidence sufficient to constitute a cause of action within the powers of the Commission to remedy. Second, the allegation that the complaint had not been sustained by the complainant nor by the supporting intervenors" (etc.).

"Examiner Hillyer: Counsel are aware, of course, that the power to dismiss is lodged solely in the Commission, and the motion will have to be referred to the Commission itself.

(Discussion of the motion followed on pages 177, 178, and off the record.)

J. W. Perrin was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

(By Mr. Carl Davis:)

J. W. Perrin. I live at Wilmington, N. C., and I am as- [fol. 585] sistant freight traffic manager of the Atlantic Coast Line Railroad Company.

I have been connected with the freight traffic department of the Atlantic Coast Line Railroad for something more than 30 years.

The complaint in this case is directed against log rates applicable between points on the Atlantic Coast Line Railroad in Florida and from points on the Atlantic Coast Line Railroad in Florida to points on the Atlantic Coast Line in Georgia. I file a map covering this territory, as my exhibit 10. It is a skeleton map of the various railroads operating in Florida and South Georgia. For convenience I have shown the lines of the Atlantic Coast Line Railroad in red (Tes. p. 179).

Rates shown in my exhibits are those in effect at present and include general percentage increases and reductions. In some cases rates in the tariffs apply per car of specified weight, but for the purpose of convenient comparison all such rates are converted to basis of per 100 pounds. In some of these exhibits rates are shown for exact number of miles, and this is because of differences in the present arrangements of mileage blocks in connection with existing rates. We believe that as to log rates there should be uniformity in the arrangement of mileage blocks so that rates shall be provided to apply for five miles and under, for 10 miles and over five miles, for 15 miles and over 10 miles, and for each five miles of distance up to 100 miles, beyond which [fol. 586] rates should be provided for each additional 10-mile block. It may be that, as to logs, and for the longer distances, the rates for two blocks and sometimes three blocks will be the same. In the complaint in this case it is stated that its object is to secure reasonable rates on logs from all points on the Atlantic Coast Line Railroad in Florida to all points on the Atlantic Coast Line Railroad in Georgia, and to have removed any unjust discrimination growing out of differences in the Atlantic Coast Line Railroad Florida intrastate log rates and the log rates of the Atlantic Coast Line Railroad between points in Florida and points in Georgia. I file a statement showing the scales of general application on logs between points on the Atlantic Coast Line Railroad in Florida and between points on Atlantic Coast Line in Florida and Georgia, as exhibit No. 11. The statement covers distances up to 540 miles. In the first column under "Tariff description A" appear the rates in our general interstate log tariff applicable interstate south of Charleston, S. C., and north of Jacksonville, Gainesville, Burnett Lake and High Springs, Fla. This

column is designated as "North Florida interstate" as distinguished from the rates in "Column B," which are designated "South Florida interstate."

The column B rates are those applicable between Atlantic Coast Line Railroad points south of Jacksonville, Gainesville, Burnett Lake and High Springs, Fla., and points in [fol. 587] Alabama, Georgia and in South Carolina south of Charleston. In column C are shown rates applicable intrastate in Florida on logs and blocks six feet and under in length, while in column D are shown the Florida intrastate rates applicable on ordinary saw mill logs. The rates in exhibit 11, under column D, are intrastate log rates on Atlantic Coast Line Railroad in Florida, applicable on logs over six feet in length, except cedar logs, and this is the intrastate scale directly under attack in this complaint. It will be noted that the rate under this scale for 170 miles is 3.7 cents per 100 pounds, while for 180 miles the rate is 8.33 cents per 100 pounds, with proportionately higher rates for greater distances; these rates up to 170 miles are what is frequently called the Cummer scale; while for distances in excess of 170 miles the rates are those prescribed by the Florida Railroad Commission for general application in that State.

I will give a history of this Cummer scale applicable up to 170 miles and the reasons for its establishment. On July 28, 1904, the Atlantic Coast Line Railroad Company acquired the property of the Jacksonville & Southwestern Railroad Company, extending from Jacksonville, Fla., and vicinity in a southwesterly direction to Newberry, Fla., shown on the map, exhibit No. 10, as running through Lake Butler, Hainesworth and Burnetts Lake. There then existed between the Jacksonville & Southwestern Railroad Company and the Cummer Lumber Company, the latter operating lumber mills at Milldale, near Jacksonville, con- [fol. 588] tracts under which the Jacksonville & Southwestern Railroad Company was obligated to handle logs from the lines of its road to the mill of the Cummer Lumber Company in train loads of not less than 30 cars at rates per car of 50,000 pounds, excess in proportion as follows: 40 miles and under, $6; 60 miles and over 40 miles, $7; 90 miles and over 60 miles, $8. Each additional 10 miles over 90 miles, $1.00 per car additional, with maximum of $10 per car from

the Suanee River. This contract was effective over a period of 15 years, making it expire on June 29, 1918. Under the terms of its purchase of the Jacksonville & Southwestern Railroad, and as a condition thereto, the Atlantic Coast Line Railroad had to assume the then existing railroad obligations under this contract, with the Cummer Lumber Company.

Thereupon, a copy of the contract setting up the so-called Cummer Scale was received in evidence as Exhibit No. 12.

Prior to the contract, between the Jacksonville & Southwestern Railroad and the Cummer Lumber Company, there was common ownership of the railroad and the lumber company, and as a matter of fact the railroad was originally built virtually as a plant facility of the Cummer Lumber Company. Coincident with the sale of the railroad by the lumber company, the latter secured to itself by the contract this low level of rates to be continued in effect over a period of 15 years. It is only natural and usual for the lumber company to have adjusted the charges of the railroad on its logs on a low basis compared with the rates generally applicable on log traffic (Tes. pp. 183-185).

[fol. 589] In 1913, the Carpenter-O'Brien Company, succeeded by Brooks Scanlon Corporation, entered into negotiations with the Atlantic Coast Line Railroad Company, for movement in train-load lots of logs from Lafayette and Taylor Counties in Florida to be shipped to the Cedar Creek Plant at Eastport, Fla., near Jacksonville, from stations on the Atlantic Coast Line Railroad's Perry branch. The distances from these several shipping points to Eastport are as follows: Clara, 142 miles; Benotis, 147 miles; Salem, 150 miles; Carbur, 152 miles; Stanco, 157 miles; Athena, 158 miles; Pinland, 162 miles; Perry, 169 miles.

A contract with the Carpenter-O'Brien Company was entered into on January 26, 1914, copy of such contract being filed as exhibit No. 13. Under the terms of this contract, solid daily log trains were operated, subject to minimum of 30 cars per train. The train is operated over that part of the Atlantic Coast Line Railroad formerly constituting the Jacksonville & Southwestern Railroad, that part of the line west of Newberry to Perry via Wilcox having been constructed after the purchase of the J. & S. W. As to the rate applied under this contract, it was based upon

the then existing Cummer scale. To the rate of $10 under the Cummer scale for 110 miles were added $1.00 to make the rate for the 130 miles, and another dollar to make the rate for 150 miles.

Atlantic Coast Line Railroad freight tariff No. 3282, effective July 15, 1914, contained the Cummer scale so ex-
[fol. 590] tended to 150 miles, by which the rate for 150 miles and over 130 miles was $12 per car, 50,000 pounds, excess in proportion. These rates were issued to apply per car per train, minimum 28 carloads, excess over average of 50,000 pounds per car to be charged for proportionately, the tariff having been made applicable between points on the Atlantic Coast Line in Florida.

As the tariff applied on train loads, which were and are handled only under contract, it was made applicable only during the periods provided in the contract for train load movements. This freight tariff 3282 was filed with the Florida Railroad Commission, and on July 29, 1914, was rejected by the Florida Railroad Commission because of the train load feature, whereupon, effective October 3, 1914, in freight tariff No. 3339, the same scale of rates for general application on logs per car 50,000 pounds, excess in proportion, was made effective, but provided that when two or more cars were shipped from one station in one day by one shipper, for delivery to one consignee at one destination, the rates would apply for an average carload weight of 50,000 pounds per car, excess of the average weight of 50,000 pounds per car to be charged pro rata.

On October 9, 1914, the Florida Commission, through Mr. J. H. Tench, rate expert, rejected this tariff, where-
[fol. 591] upon, in freight tariff No. 3373, effective October 30, 1914, the same scale was made applicable for general application between points on the Atlantic Coast Line Railroad in Florida on Logs, carload, per car 50,000 pounds, excess in proportion.

On July 5, 1916, by freight tariff No. 4135, the scale was extended so as to apply the rate of $12 up to 160 miles. This was in accordance with the terms of the Carpenter-O'Brien contract, which had fixed the rate to apply from the group of stations Clara to Perry, the distances to Eastport ranging from 142 to 169 miles.

In September, 1918, there arose the question of rate to be applied on logs from Okhumpka, Fla., to Milldale, 166 miles, and Eastport, 170 miles. This movement consisted of timber of a special character, to be used in the construction of ships under progress by the government during the war period, and the shipper stated the purpose of having the logs sawed into lumber either by the Brooks-Scanlon Corporation at Eastport, or the Cummer Lumber Company at Milldale, the lumber to be then delivered to the government ship yards near Jacksonville.

I was referring to the rate fixed for 170 miles, and over 166 miles to cover a movement of logs from Okahumpka in connection with shipments in—moving in connection with the construction of ships in progress by the government.

The United States Railroad Administration was then in operation and the Director of the Division of Traffic in his [fol. 592] rate authority No. 2178, ordered the establishment of rate of $16.50 per car 50,000 pounds, for distances 170 miles and over 160 miles; at that date the previous rate of $12 for 160 miles and over 130 miles had, under General Order 28, of the U. S. Railroad Administration, been increased to $15.

Now, Mr. Examiner, right at this point I want to file as exhibit No. 14, the statement to which you referred yesterday, showing the chronological changes in this intrastate Florida scale as affected by the general percentage increases.

While the scale rate of $18.50 is applied between all other points in Florida for distances 170 miles and over 160 miles, the rate from Pinland and Perry to Eastport, 162 miles and 169 miles, respectively, is $17, as contemplated in the Carpenter-O'Brien contract. So that rates established on train load basis became applicable on single car lots between points on the Atlantic Coast Line in Florida. It was customary in 1914 to handle logs in train load lots at rates made for that character of service. Some of the principal carriers in the southeast, including the Atlantic Coast Line, had various arrangements of that nature, and train load rates were customary in the northwest where the handling of logs was in great volume. As to our own arrangements except in the state of Florida, the operation of log train rates continued until December, 1917.

I file as exhibit No. 15, copy of letter dated October 9, 1914, from Mr. J. H. Tench, rate expert, Railroad Commis- [fol. 593] sion of Florida, addressed to Mr. James Menzies, freight traffic manager, Atlantic Coast Line. This letter is extremely critical of these rates and condemns the low level thereof as being unreasonable in and of themselves, and in fact, confiscatory, and as resulting in unjustifiable discrimination, as between Florida shippers, as regards train load and carload movements, and inasmuch as the scale was so issued, the Commission thought, as to produce differences between intrastate shippers in Florida. It was because of this letter that our freight tariff No. 3373 effective October 30, 1914, and subsequent tariffs were issued so as to make the rates apply on a single car basis for uniform application in Florida within the restricted distances.

The application of the $17 rate from Pinland and Perry to Eastport results from the Carpenter-O'Brien contract, and shows the limit to which we have gone in complying with that contract.

Thus far our management has not been confronted with the alternative of applying the $17 rate uniformly in Florida for distances 170 miles and over 160 miles, or of discontinuing its application to Eastport only.

I also file as my exhibit No. 16, copy of letter from Chairman Burr, of the Florida Railroad Commission, addressed to Mr. E. C. McLeon, of Kendrick, Fla., under date of August 18, 1915, and an excerpt from the 20th annual report of the Florida Railroad Commission for the year ending February 28, 1917, in both of which comment is made on the [fol. 594] low measure of the log rates operated by the Atlantic Coast Line Railroad in Florida.

(By Mr. Davis:)

"Q. Realizing the low level of the rates, particularly if applied on single car shipments of logs, what reasons governed the Atlantic Coast Line Railroad in its decision to make this scale of rates generally applicable in Florida?"

(Objection to this question was presented by Mr. Cotterill, on the ground that the witness should first be qualified as to his participation in the making of the rates and his personal knowledge of the facts and circumstances. There-

upon the following testimony was offered as to the qualifications of the witness to answer the question.)

I am familiar with the reasons that actuated the management of the Atlantic Coast Line in its decision to make this scale of rates generally applicable in Florida, as a matter of personal knowledge, and I participated in the making of the rates themselves. Of course this was done in 1914, when I was a minor official in the office, but of course the whole matter was handled with the department through the Vice President, preparing different statements and comparisons, and the preparation of any other data that the vice president needed in his negotiations, and I furnished certain information that he asked for. I was not present at the conference between the vice presidents and the shippers. I was thoroughly familiar with the plan as contemplated and the reasons on which the conclusion was based. I was in daily contact with the negotiations insofar as it took place in our office at Wilmington. I was engaged in it, in consultation and in the preparation of statistics; consultation with the officers of the traffic department, and talked it over with them in conferences, the purpose of those conferences being to decide what should be done. Mr. Brand had the power to decide. I did not (Tes. p. 193). I was not in position to [fol. 595] say or know all that was in Mr. Brand's mind. I think he knew what was in all of our minds. Of course I did not know what was in his mind. My contact with that situation was just the same as it is with any other proposition that comes up to establish a rate. The thing is subject to conference and discussion pro and con. I offer my views, the other officials offer their views, and an agreement is reached as to what would be the proper step to take. It is identical with what was done in this situation. I do know the considerations that prompted Mr. Brand to make that decision; part of them I originated myself. Mr. Brand merely based his conclusion upon the information furnished him by myself and other officers of the freight traffic department, but I cannot be a fortune teller. I do know that Mr. Brand's conclusions were based on certain fundamental facts which were furnished him partly by myself and partly by other officials of the road, who were in daily touch with the situation (Tes. p. 195). It was part of my duty *yo*

assist Mr. Brand in a determination of the course to be pursued. I participated in the conferences with Mr. Brand and other officers of this company in which there was free discussion pro and con as to what should be done and I know enough to be able to state of my own knowledge the reasons that actuated these conferences, as a result of which Mr. Brand, being the officer in charge, made the decision (Tes. p. 196). This happened in 1914 or 1913 at a time when it was part of my duty to aid Mr. Brand in reaching the conclusion that was reached, and I performed that duty.

I have no reason to believe that Mr. Brand withheld from me anything that led him to take the action that he did; on the contrary the conferences were of such length and so numerous that the matter was sifted from every viewpoint over a period of time, and this conclusion was reached. And I was present at those conferences.

(Objection overruled.)

[fol. 596] The Atlantic Coast Line Railroad had in good faith executed a contract with the Carpenter-O'Brien Company, under which it agreed, throughout the length of time necessary, to move the logs covered by the contract at a specific rate subject only to law and to change or cancellation required by law, or by judgment of any court or commission of competent jurisdiction. Our management elected to adhere strictly to the terms of the contract, notwithstanding the fact that, although the rates had not been ordered changed or cancelled by the Railroad Commission of Florida, the judgment of that Commission had characterized them as exceedingly low and discriminatory.

Our management elected to comply with the terms of the contract in preservation of our good faith, even to the extent of applying these abnormally low rates on any number of cars of logs between any two stations in the State of Florida. The contract was, of course, only with the Carpenter-O'Brien Company, and their successors, and there was in that contract no obligation to other shippers. I have previously indicated that under the requirements of the [fol. 597] Railroad Commission of Florida, the Atlantic Coast Line was faced with two alternatives; that is to say, the cancellation of the contract rates, or the application of

the contract rates to other Florida situations regardless of the volume of the traffic.

The Atlantic Coast Line chose the latter alternative, and the effect was the establishment for general application in Florida, of rates that had been made under peculiar circumstances, and to be applied only on logs in train load lots. The rates obtainable under the contract with the Cummer Lumber Company would have expired in 1918, but for the fact that in 1914 we made the contract with Carpenter-O'Brien Company, the rates under which we were required to extend to other shippers.

Therefore, while we had the contractual obligation to apply these rates for Carpenter-O'Brien Company, no such contractual obligation applied to other shippers and they would not be receiving the benefit of these low rates were it not for our relations to the Carpenter-O'Brien Company. Frankly, we feel that our relations to the Brooks-Scanlon Corporation are entirely different from our relations to the other log shippers, who are merely beneficiaries of the concessions that we had to make in order to fulfill our contractual obligations to the Brooks-Scanlon Corporation.

The cost of handling a given amount of logs in train loads [fol. 598] is less than in single car lots or in lots of a small number of cars in regular trains, unquestionably. If the logs are moved in less than train loads, the work must be done by regular freight trains along with all other classes of traffic and subject to expense of classification of the contents of the trains, switching into and out of trains at points of origin, points enroute and at destination, as well as switching to the tracks serving consignee's plant or storage facilities; separate billing is required for each car and collection of charges from each of the consignees to whom the several cars may be delivered. If the logs be moved in train loads, the loaded cars are assembled by the shipper with his own power and delivered to the railroad as a train load ready to be moved without switching into trains at shipping points, at intermediate points or at destination; all cars are billed together and all freight charges collected in one transaction. The entire train is delivered to the consignee at destination. Those economies were considered when the management of the Atlantic Coast Line dealt with the question of rates to be established for

the train load movement of logs from the Perry branch. Our management took into consideration the fact that the logs would be moved in train loads, and with such regularity that would make the service less expensive than would have been the case if the shipments had been expected to move in single car lots and with no degree of regularity. These [fol. 599] rates as restricted to train load movements were abnormally low and could have been justified for application on train loads only by the circumstances and conditions under which they were made. As applied in all situations, regardless of quantity, they are, in my opinion, far below the level of reasonable log rates; they, as a whole, are no more than one-half of the rates generally applicable on logs in all of this southeastern territory, and logs are handled in the southeast on a particularly low level of freight rates.

"Q. The complaint in this case, while claiming unreasonableness in the interstate rates on logs from Florida points to Georgia points, seems to be directed largely against discrimination in favor of intrastate shippers of logs in Florida to the prejudice of the interstate shippers. How would you view any suggestion that the Cummer scale of log rates be made the measure of interstate rates for the Atlantic Coast Line?

"A. I would view such a suggestion as impossible, and the application of this level of rates as destructive and without justification. The Atlantic Coast Line serves the states of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama, and operates through those parts of practically all of these states in which the tonnage of logs is heaviest, and if anything approaching the Cummer scale should be made the measure of reasonableness of our log rates generally, the result from a revenue standpoint, could not be justified.

"Q. Turning now to the interstate rates and referring again to your exhibit No. 11, you show in columns A and B, respectively, the interstate rates from and to North Florida, and from and to South Florida. The north Florida interstate scale is the scale referred to specifically in the com- [fol. 600] plaint. Please state as briefly as you can the history of these interstate scales.

"A. For many years there has been a system of local tariffs on the Atlantic Coast Line south of Charleston, that, as to Florida, differentiated between points north of Jacksonville, High Springs, River Junction, and so forth, and points in Florida, south thereof. As indicated on this exhibit, the rates in column A are applicable interstate to and from this northern group of Florida points as distinguished from the rates in column B applicable to and from the southern group of Florida points."

[fol. 601] The rates in column A, which are the interstate rates under direct attack on this complaint, became effective August 15, 1925.

Prior to that time there were six interstate mileage scales on logs between points on Atlantic Coast Line south of Charleston. The purpose of the present scale of rates in Column A was to provide a uniform basis for interstate application, superseding the various scales previously in effect.

At this point I would like to file as exhibit No. 17, statement showing these Atlantic Coast Line mileage scales on logs in effect prior to August 15, 1925, and applying in the several interstate situations south of Charleston, S. C. This exhibit indicates by caption the general territorial application of each scale, and there is also shown by foot notes the details of the territory where they applied.

The statement also shows an average of the previously existing scales and also the present interstate scale that [fol. 602] superseded all six of these scales. With the exception of the South Carolina interstate scale, column E, for distances in excess of 120 miles the present interstate scale represents substantial and material reductions from the rates previously in effect.

The present interstate rates are 10 per cent less than the net rates submitted by Georgia carriers to the Public Service Commission of Georgia in response to that Commission's order of July 14, 1921, which announced the purpose of generally revising rates within the State of Georgia. The carriers in Georgia submitted to the Georgia Commission:

(a) A scale of rates on forest products to be applied without transit, and

(b) A scale of net rates to be applied on logs and other products under transit arrangements.

As I have just stated, our interstate scale is 10 per cent less than the net rates so submitted to the Georgia Commission, which was submitted prior to the general 10 per cent reduction case.

In addition to the reductions in the interstate rates previously in effect, there has been established in this new scale a uniform system of interstate rates that must have been beneficial to the shipping public. In addition to general reductions, the new scale has removed the source of various complaints that had been made against inequalities [fol. 603] existing in interstate rates in the same general territory. When the carriers, in 1921, submitted to the Public Service Commission of Georgia the proposed scale of rates on logs, the purpose of the carriers, as then stated, was to adopt this scale for uniform interstate application throughout their several systems and to secure the application of the same scale on intrastate traffic in states other than Georgia through the State Commissions of those other states. Not only did there exist a great variety of interstate scales and intrastate scales applicable on different railroads throughout Southeastern territory, but in the case of some of the larger systems a lack of uniformity existed in the scales applicable over individual lines. As previously stated, the Atlantic Coast Line had six such varying interstate scales in this general territory, and, of course, the variety was still further increased by the existence of differing intrastate scales in all of the states that we serve. It will readily be seen, therefore, that the plan under the proposal of the Public Service Commission of Georgia, if it had entirely succeeded, would at least have established uniformity, which, as to logs, is just as important a consideration as to any other commodity. In fact, the absence of discrimination is generally more important to the shipper than the level of the rates.

As to the submittal to the Public Service Commission of Georgia of the scale of rates that was afterward made [fol. 604] effective for interstate movement on Atlantic Coast Line Railroad, that Commission did not approve the rates submitted by the carriers, but on April 15, 1925, the Georgia Commission, after exhaustive hearings and sub-

mission of voluminous testimony, issued its order to become effective June 1, 1925, prescribing certain rates on logs that will be shown by me in a subsequent exhibit. The scale so prescribed, while lower than the scale submitted by the carriers, was somewhat higher than the existing greatly depressed rates in Georgia. On May 29, 1925, the Georgia Commission suspended the rates prescribed on April 15, 1925, and set the matter down for further hearing, which was held on July 13, 1925. The testimony at the rehearing on July 13, 1925, was directed to the feature of discrimination, the evidence being referred to in letter of July 16, 1925, from the rate expert of the Georgia Commission, Mr. Price, to the officials of the different roads, as follows:

"The evidence submitted at the rehearing reveals, what is in the opinion of the Commission, an intolerable situation, as regards the rates in Florida, as compared with the interstate rates between Georgia and Florida, and the effect on this situation of the suspended rates authorized in the Commission's order."

The Atlantic Coast Line Railroad's present interstate log scale was made effective August 15, 1925. This scale was already in effect for interstate application on Atlantic [fol. 605] Coast Line Railroad in Carolina territory, and, as was stated to the Public Service Commission of Georgia, it was the intention to make the same scale uniformly applicable throughout our system. During the summer of 1925, a number of inquiries for log rates were received from shippers in Georgia, and we were anxious to dispose of those inquiries in a manner that would produce uniformity to the greatest extent possible. After the new rates in Georgia had been prescribed and suspended by the Georgia Commission, we proceeded to make effective for interstate application our present interstate scale.

I file a statement as Exhibit No. 18, contrasting the revenue per car on logs under our interstate mileage scale and under our Florida intrastate mileage scale, with the revenue per car on brick, gravel, sand, lime and cement, moving interstate between North Florida and Georgia. First are shown the rates on logs and the other materials, and next the comparison of revenues per car. The weights per car are the actual averages on the Atlantic

Coast Line for year 1925, as reported to the Interstate Commerce Commission.

Brick and road-building materials constitute an unusually heavy character of traffic, and I know of no traffic on the Atlantic Coast Line, other than logs, that is handled on a lower basis of rates, so that this exhibit shows comparison of our earnings on logs with the lowest grade of traffic that [fol. 606] we are called upon to handle.

The Exhibit is intended to show first that the interstate scale produces revenues on logs far below revenues on other extremely low grade traffic, and the comparison also shows the tremendous difference growing out of the application of the low Florida intrastate log rates up to 170 miles.

Exhibit No. 18, that I have just discussed, compares revenue results on logs with the voluntarily established interstate rates on other commodities, between points in Florida and points in Georgia.

I would like to file a similar exhibit as No. 19, contrasting the earnings on logs with earnings in Georgia on intrastate shipments of these low grade materials.

This exhibit likewise shows comparison between the earnings under the interstate log scale and the Florida intrastate log scale. There is no traffic on our line in Georgia that has lower transportation characteristics than brick, gravel and sand, but nevertheless the statement shows that even under the interstate scale the earnings on logs are, as a whole, materially lower than on any of these low grade articles, and that the earnings under the Florida intrastate log scale are so low as to appear almost unbelievable.

I file as exhibit No. 20, a similar statement comparing revenue per car under the interstate and Florida intrastate log scales with the rates within the State of Florida on these low grade commodities. It is impossible to conclude from examination of this statement that the interstate log [fol. 607] rates that produce revenue so far below the revenues on other low grade articles are too high, or that the Florida intrastate log rates are not high enough.

I file an exhibit as No. 21 bearing upon percentage relation between lumber rates and log rates. The only mileage scales of rates on southern lumber prescribed by the Inter-

state Commerce Commission that I have been able to find are those prescribed in 60 I. C. C. 5, applicable to Meridian. However, the southern carriers adopted an interstate mileage scale as a guide for making interstate rates on lumber, particularly between Southeastern and Carolina territories, which conforms rather closely with, although slightly lower than, the rates to Meridian as prescribed by the Commission. In this exhibit I have shown the lumber rates to Meridian, the basic scale used by the carriers on lumber, the interstate log rates of the Atlantic Coast Line and the percentage relationship that the Atlantic Coast Line interstate low rates bear to the lumber rates to Meridian and to the carriers' basic scale. This has been worked out for representative distances, and perhaps it would be fair to say that the exhibit shows that the Atlantic Coast Line interstate log rates are about 55 per cent of the lumber rates to Meridian, and about 60 per cent of the lumber rates under the carriers' basic scale.

The log rates heretofore prescribed by the State commissions in Florida and Georgia have been 60 per cent of the [fol. 608] rates prescribed on lumber.

I know of no instances where a lower percentage relationship has been adopted. In South Carolina the Railroad Commission prescribes on logs 80 per cent of the lumber rates.

I file a statement as exhibit No. 22 indicating the low character of the log rates on the Atlantic Coast Line Railroad. I selected 15 commodities having the lowest transportation characteristics, this list of commodities being shown in the exhibit. Our auditing department undertook to show for the month of May, 1926, the number of tons of each such commodity handled by the Atlantic Coast Line Railroad, the revenue derived therefrom and the average haul, and, based upon these figures, they arrived at the percentage of all tonnage, the percentage of all freight revenue, the revenue per ton and the revenue per ton mile.

The purpose of this statement is to indicate the low earnings on logs as compared with any of the other commodities, bearing in mind that all of these commodities constitute the lowest grade of traffic that we handle. The comparison that I desire to show is concentrated in the last column, which shows, for instance, as to cottonseed that the percentage of

all freight revenue is 61½ per cent of the percentage of all tonnage; as to gravel and sand, the statement shows that the percentage of all freight revenue is 34½ per cent of the percentage of all tonnage.

[fol. 609] The statement shows that as to fertilizer, the percentage of all freight revenue is 83.8 per cent of the percentage of all tonnage; as to logs it shows that the percentage of all freight revenue is 28.4 per cent of the percentage of all tonnage. This is merely a way of indicating the comparative levels of earnings on these commodities.

It will be noted that none of these commodities moved distances substantially less than did logs, except cottonseed and cordwood, and in most instances the average haul on logs was less.

In considering the value of this comparison the average haul is important.

It may fairly be stated that, without making any allowances for differences in average haul, the comparison between logs on the one hand and fertilizer, crossties, cordwood, gravel and sand, cottonseed hulls and cottonseed, on the other hand, is unquestionably convincing, while on the other commodities the percentage figures are so much greater than on logs that even the greater average haul in the case of the other commodities cannot be used to the discredit of the statement; for instance, while the average haul on phosphate rock is 154 miles, as against an average haul on logs of 109 miles, the percentage figures are 46.9 and 28.4 respectively, making a difference in percentage figures far out of proportion to the difference in average haul. This statement is merely one method of substan-

[fol. 610] tiating our statement that under the present level of rates, logs are the lowest revenue producers of all of our traffic.

It is the contention of the Atlantic Coast Line Railroad that its interstate mileage scale on logs represents a level of rates none too high, and that if all of our log traffic could be handled at the rates contained in this interstate mileage scale the revenues obtained from the log traffic would be in much fairer proportion to the revenues obtained from other classes of traffic. We are convinced that our log rates, as a whole, have become inordinately low and that the revenues derived from the transportation of logs as related to the

service performed are so low as to suggest a doubt about fairness to shippers of other classes of traffic. In making this statement I have in mind not only the intrastate log rates in Florida, but the log rates applicable generally on the Atlantic Coast Line.

The purpose of the testimony that I have given up to this time is to show that, intrinsically, our interstate mileage scale on logs is reasonably low, and that it would be out of the question to substitute therefor any scale, even approximating our Florida intrastate scale, for distances up to 170 miles.

I have not undertaken to show any comparison between our log rates here under consideration and the rates of other lines, which, in numerous instances, are materially higher, because I believe that there is a situation immediately around us that will necessitate the fixing of a uniform [fol. 611] scale of log rates on the Atlantic Coast Line Railroad less than might reasonably be expected and made independent of log rates elsewhere that may have been higher under circumstances and conditions not substantially different from those existing in our territory.

In order to make my meaning clear, I would like to refer briefly to some of the decisions in the general territory that we serve. In the case of Pierpont Manufacturing Company versus Southern Railway, 50 I. C. C. 81, decided May 2, 1918, there were involved rates on logs to Savannah, Ga., from Southern Railway stations in South Carolina south of Columbia, the distance ranging from 20 miles to about 140 miles. In the report in that case the Commission stated that during the period December, 1909, to June, 1916, the Southern Railway had in effect a scale of rates on logs beginning with rate of $7.00 per car of 40,000 pounds for 10 miles and under, and for each additional 10 miles, $1 additional, but that in June, 1916, this scale was cancelled and lumber rates thereafter applied.

The Commission cited numerous instances of increases growing out of the change, such as from $12 to $18 per car, from $14 to $25 per car, from $15 to $25.60 per car, and so forth.

The Commission also found from the testimony that the rates under complaint, same as on lumber, in one instance violated the Fourth Section of the act, without authority, and declared this violation unlawful.

[fol. 612] In that case the Commission approved a scale beginning with $8 for 10 miles, ending with an additional $1 for each additional 10 miles. The Southern Railway at the hearing offered a scale beginning with $8 with this additional $1 for each additional 10 miles. That is the scale that the Commission approved. I suppose I am debarred from further reference to it.

Reference to that case is merely the first step to show that when the Commission decided that case they laid the foundation for the log ratesin this general territory.

The case of the Southern Veneer Association, 62 I. C. C. 669, decided July 15, 1921, covered rates on gum and poplar logs from South Carolina points on the Atlantic Coast Line and Seaboard Air Line to North Carolina destinations generally reached by the Southern Railway, although the Seaboard Air Line Railway reached one of the points, Rutherfordton, N. C.

The Commission in that case adopted the scale of the Southern Railway that was then in effect from South Carolina to North Carolina points, merely changing the scale as was necessary to correct improprieties in the progression of the scale. Now, the Southern Railway scale so adopted, was originally the Pierpont scale. That was treated there as having been substantially approved for application in this territory. On April 27, 1925, the Southern Cotton Oil Company of Savannah, Ga., filed complaint against the Atlantic Coast Line Railroad, docket No. 17043, covering the application of lumber rates on logs from Atlan- [fol. 613] tic Coast Line Railroad stations in South Carolina south of Charleston to Savannah, Ga. Subsequent to the filing of the complaint, the present interstate log scale became effective. The Commission's decision in this case has not been rendered, but the Examiner has recommended a scale of rates that is identical with the Southern Railway's scale. I should like to add that in view of our examination of the decisions of the Interstate Commerce commission affecting our log rates in this same general territory, we conclude that it is useless to ask the interstate Commerce Commission at this time in this case to approve a scale of rates substantially higher than they have fixed in the previous cases involving the interstate rates in the same general territory.

Now, on that account, we want to express our willingness to adopt for interstate application throughout the length of our line, not including south Florida, the same rates as are applicable in the State of Alabama.

I might say that we have already prepared to establish this scale for uniform interstate application between Alabama and points in Georgia, between points in Georgia and points in South Carolina, between points in South Carolina and points in North Carolina, and between points in North Carolina, and points in Virginia, and—as well as between points in South Carolina. The scale is already in effect in Alabama, and it remains for the Commission in Georgia and North Carolina to pass upon what the scales [fol. 614] shall be within those two states.

I file an exhibit as No. 23 showing the present rates and descriptions applicable interstate on logs between points in Florida and points in Georgia, together with the rates as they would be under our proposal. The exhibit shows under "Description" as to north Florida, present inter state log scale of the Atlantic Coast Line; under Description B, certain rates on short logs, six feet and under in length applicable for distances 150 miles and under from Florida points to Bainbridge, Thomasville and Metcalf, Ga., and under Description C, the proposed scale of rates and the descriptions to be used. As to south Florida, the statement shows under Description D the existing rates on logs between south Florida points and points in Georgia, and under Description C rates proposed to be applied between south Florida points and points in Georgia.

"Q. You show in this Exhibit under Description B, present rates applicable from Florida points to Bainbridge, Thomasville and Metcalf, Ga., for distances up to 150 miles, and the statement indicates that under your proposal the rates under Description C would govern in future. Please explain the record under which these rates under Description B were established.

"A. In February, 1916 this line of rates was originally established to Thomasville, Ga., on request of a shipper who asked for rates on short length logs to Thomasville from points in Alabama and Florida, within 150 miles, and he also asked that the rates applicable in Florida on short length logs be used. The shipper explained his purpose

to establish a plant for the manufacture of these logs at either Tallahassee, Fla., or Thomasville, Ga. He called [fol. 615] attention to the fact that the Central of Georgia Railway applied for interstate application on short logs the Georgia class P rates per car of 40,000 pounds.

As a result of these negotiations, the rates to Thomasville were established from Alabama and Florida points on the same basis as applied in Georgia, observing the Florida state rates as minima.

In April, 1916, a request was received for rates from Miccosukee, Fla., to Metcalf, Ga., which request was considered and satisfied by the establishment of the same scale of rates as to Thomasville.

That request was for short lengths as well as long lengths.

In February, 1918, a request was received for the establishment of rates from Florida points to Bainbridge, Ga. and in response thereto the same scale was made to apply to Bainbridge as to Thomasville and Metcalf. I may say that while the tariff description is more or less involved and, in fact, does not meet the requirements of the Tariff Bureau of the Interstate Commerce Commission, the requests for rates referred altogether to the short length logs, and it should also be stated that when the Atlantic Coast Line Railroad's general interstate mileage scale as now published in Agent Glenn's I. C. C. A-415, was issued in August, 1925, the expectation was that it would supersede these rates to Bainbridge, Thomasville and Metcalf.

[fol. 616] "It was afterwards found advisable to file with the Southern Freight Association a proposal to cover this change, but the Atlantic Coast Line withheld action upon request of consignees at Bainbridge and Thomasville, who stated that as steps were already under way for the establishment of a uniform level of log rates in that territory, they desired that these specific rates be allowed to stand pending the outcome of that general movement in the direction of uniformity."

In my exhibit No. 23, under description C, we propose for application between south Florida points and points in Georgia a scale of rates that is materially lower than existing rates. The basis for this scale is as follows: As has been shown, our general interstate mileage scale has never been applied to and from south Florida points, meaning

points south of Jacksonville, Burnett's Lake, and Gainesville and High Springs. Having proposed for application between points in north Florida and points in Georgia the same scale as in effect in Alabama, we would be willing to adopt for application on the Atlantic Coast Line between south Florida points and Georgia points the scale as indicated in this exhibit, which is substantially 15 per cent higher than the rates proposed to and from north Florida points.

The reason why rates to and from south Florida points are proposed on basis higher than rates to and from north Florida points is that the geographical location of Florida makes that State peculiar as permitting an exceedingly amount of trans-state traffic through the State of Florida, [fol. 617] the traffic of Florida carriers being that which originates at or is destined to Florida points.

Probably the only exception of any importance is the traffic of the Florida East Coast Railway to and from Cuba. The participation of the Atlantic Coast Line in the Cuban traffic, so far as Florida is concerned, is limited to the few miles of its line between the Georgia-Florida State line and Jacksonville.

Our observation has been that it has been very generally recognized that the conditions peculiar to Florida should properly be considered in fixing rates to, from and between points in that State.

Relatively speaking, the development in Florida is agricultural rather than industrial. Conditions in the nature of a boom in Florida during the last few years naturally produced an increase in the volume of traffic, and, of course, there is an increase in traffic that has been independent of the boom conditions. The agricultural production has increased, and of course, there has been within the last few years a heavy movement of building materials and road-making materials.

However, such general increases have been to a greater or less extent true in other southeastern States.

Generally speaking, interstate rates to and from points in the Florida peninsula are made on basis of rates to Jacksonville plus separate factors usually on mileage scales applicable south of Jacksonville. There has been some departure from this general basis in the application of inter-

[fol. 618] state mileage scales of the Atlantic Coast Line Railroad, as, for instance, in the case of log rates shown under the heading of south Florida, Description D, in exhibit No. 11. However, such conditions—such continuous mileage scales between south Florida and other states have been made on a higher level than have the rates to and from points in north Florida.

The Interstate Commerce Commission, in its decision in docket No. 13494, recognized different operating conditions in the Florida peninsula as contrasted with those in other parts of the south.

The action of the Interstate Commerce Commission in matters pertaining to rates to and from Florida points may be ascertained by reference to Florida Fruit & Vegetable Shippers Protective Association versus Atlantic Coast Line Railroad, et al., 14 I. C. C. 476, and subsequent cases of the same nature reported in 17 I. C. C. 552, 22 I. C. C. 11, and in complaint of the Florida Growers & Shippers League versus Alabama & Vicksburg Railway Company, et al, I. & S. Docket 886, reported in 43 I. C. C. 595; also in Docket 9604, Dawson Produce Company versus Atlantic Coast Line Railroad Company, et al, 49 I. C. C. reports.

I may say generally that in these decisions, while they bore upon the principle that the rates to and from Florida should and might be made on Jacksonville combination, of course, the effect of those decisions was to make the rates higher than customary in the South, and the Commission, [fol. 619] as I have previously stated, has recognized different Florida operating conditions.

In order that our proposal as to the application of the Alabama intrastate scale uniformly on the Atlantic Coast Line Railroad, not including south Florida, may be made clear as to the relative level of the rates so proposed, I file exhibit No. 24, containing such comparisons as may have this effect. This exhibit compares the rates to Meridian, fixed by the Interstate Commerce Commission for the Southern Railway in 60 I. C. C. 5, approved by the Interstate Commerce Commission, from South Carolina points to Savannah, in the Pierpont case, 59 I. C. C. 81, ordered by the Commission—Interstate Commerce Commission, in the Southern Veneer Company case, from South Carolina points to North Carolina points, 62 I. C. C. 69, the intrastate

rates in Georgia under the order of the Georgia Commission, April 15, 1925, and subsequently suspended the intrastate rates in Alabama now in effect and as proposed for uniform application on the Atlantic Coast Line Railroad, and the general scale of the Southern Railway—Southern Railway I. C. C. A-9783.

Exhibit 24 has been changed in the head-note to delete the part within the second parenthesis. It will be noted that the difference between the Alabama scale and the suspended scale in Georgia grows out of the fact that the Alabama Commission made the initial rate for 10 miles and under 2½ cents, while the Georgia Commission made the same initial rate for five miles and under. Beyond 30 [fol. 620] miles, the two scales are identical.

The progression in the Alabama scale is, in our opinion, to be preferred over the scale of the Southern Railway, this progression in the Alabama scale being one half cent for each 10 miles up to 40 miles; thereafter one half cent for each 15 miles up to 100 miles, and thereafter one half cent for each 20 miles.

The Southern Railway's scale increases one cent for the 20 mile jump from 10 to 30 miles, one half cent for the 10 mile jump from 30 to 40 miles, one half cent for the 20 mile jump from 40 to 60 miles, one half cent for the 20 mile jump from 60 to 80 miles, one cent for the 10 mile jump from 80 to 90 miles, one half cent for the 20 mile jump from 90 to 110 miles, one half cent for the 30 mile jump from 110 to 140 miles, one cent for the 20 mile jump from 140 to 160 miles, and so fourth.

The rates proposed are perhaps as low as any one could reasonably expect, and we propose the Alabama scale in preference to the other scales, because it already applied on our line in Alabama and because we consider it as a more perfectly progressed scale than the other scales shown.

That concludes our exhibits.

Examiner Brown: They were thereupon received in evidence as defendant's exhibits 10 to 24, inclusive.

[fol. 621] Cross-examination.

(By Mr. Perry:)

The rates under the Carpenter-O'Brien contract are still in effect as amended by the general percentage changes.

The contract provides that they shall continue during the time necessary to cut certain timber referred to in the contract, I do not know of any reason why there should be lower rates intrastate in Florida than interstate from Florida into Georgia from a transportation standpoint, and based on all other conditions being the same.

"Q. Then if the same transportation conditions exist interstate Florida to Georgia, as exist on the Coast Line intrastate in Florida, then would you say that the same scale of rates from Florida to Georgia should exist as exists on the Atlantic Coast Line in Florida intrastate.

"A. That is a new proposition, Mr. Perry. It goes without saying that as between Florida and Georgia it is merely a coincidence, for the purpose of this illustration, that this took place in Florida. If the timber had been in Georgia, probably the same result would have been achieved. In other words, there are no different conditions in Florida that would have justified the establishment of lower rates under the same controlling conditions than would be applied within the state of Georgia.

"Q. Is it your position that the Florida scale on the Atlantic Coast Line, should continue even in Florida?

[fol. 622] "A. We have a contract, Mr. Perry. We have lived up to it, and we propose to live up to it in accordance with the terms of that contract, so far as we may be able."

The contract itself fixes a limitation upon its existence. If it is outlawed by any proper judicial or legal decision that of course kills the contract. Comparing conditions now with the time when the contract was entered into, it would present a different story, or a different picture. We would not enter into such a contract today. I would rather have done it in 1914 than today, because the results in 1914, so far as any profit is concerned, are better than they are now. As to whether those rates under transportation conditions as they exist are now compensatory, the Florida intrastate rates on the Atlantic Coast Line, I doubt it very, very greatly. I did not make the statement that they are not compensatory. Of course, I understand that what Mr. Perry refers to as compensatory means a fair and reasonable profit over and above the cost of operation. My answer is not, of course, limited to the mere question of

what the out of pocket cost is. I doubt it exceedingly whether they are compensatory, as I said before, and that is based merely upon a general idea of operating conditions, together with such figures as I have seen bearing upon the cost of the service. Taking the transportation conditions obtaining in the case of the rates under review on our line in Florida, compared with transportation con-
[fol. 623] ditions interstate, there is not any reason now why those rates should not be applied interstate, if they are on a reasonable level. Taking the transportation conditions existing interstate as compared to the transportation conditions existing intrastate in Florida, there is every reason in the world why the Florida rates should not be extended into Georgia, because in the first place our whole testimony shows the conditions under which the Florida scale was made, and the obligations we have under that contract to carry out the agreement to apply that scale.

I think that contract rates should prevail, regardless of whether they are fair or not, as compared to territory similarly situated, and in competition with the same territory where the contract rates prevail, if they are legal—as long as they are legal—and I speak the mind of our management on that—as long as they are legal we will observe the contract. We do not want any opportunity to observe that anywhere else by our own act or by authority of any regulatory body. We have not renewed either of those contracts in the last two or three years, or four or five years; not since the original contract ran from 1914 to date, and there has been no change by way of renewal and the extending of the time by any act of our own; not since 1914, when it was dated. You understand that the Carpenter-O'Brien contract is now the Brooks-Scanlon Corporation contract, [fol. 624] and it is one contract. That is the only rate contract that is in effect. There was some reference made to contracts, I believe, in petitions for intervention that we have, but those are log train operators' contracts, and do not fix any rate. In other words, whatever is the customary rate between points covered by those trains, the rate applies, but the Carpenter-O'Brien contract, now the Brooks-Scanlon Corporation contract, is the only contract outstanding that contains a rate agreement.

[fol. 625] Making these train load log contracts is a very common practice, Mr. Perry. That is merely an agree-

ment, that is merely an arrangement to this extent, that on agreement to give us without fail a minimum number of cars a day, we send a special crew and power to move that train as a solid train, but there is no special favor in that. As a matter of fact, there is a penalty attached to it, because the man who gets that solid train operation is obligated to pay for the minimum number, whether he ships them or not. We furnish the equipment in that case. That service and the charge or rate is only permissible, and very naturally so, and practicable in situations which would not interfere with the through fast train service. In other words, the establishment of a train load movement by special train would have to be considered on its merits, as to whether it is practicable, and whether it would by its establishment cause interference with the ordinary run of traffic. so that these log trains are usually operated only on branch lines where that condition does not exist (Tes. pp. 235 and 236). We would not oppose that kind of service anywhere under similar conditions on branch lines if the tonnage was there. I do not want to convey the impression in answering your question that I was agreeing that we would be willing to handle logs in special trains in any other situation for the rates that now apply in the case of the rates under this particular contract (Tes. p. 236). The trainload service is separate and distinct from this Carpenter-O'Brien contract, although in the case of the Brooks-Scan-[fol. 626] lon Corporation the contract for the train service and the rate is in one document. We did not voluntarily submit to the contract beyond the time that we were legally bound. You will understand that it takes a good many years to move a billion feet of logs. I have no idea what the probable duration of that contract is (Tes. p. 237). Of course it would all depend upon the expedition of the logging operation, that is, how fast the logs are shipped. The contract is with a guarantee of 30 cars per day. That is approximately 360,000 feet. I don't know just what class of cars are used in that service but those cars generally carry about 5000 feet per car. All of the movement under the scale is not in train loads. We handle some single car lots. The movement is not confined to Jacksonville or Perry or any one point (Tes. p. 238). We handle various shipments of single car lots to various points on our line.

"Q. Is there any reason why the lumber manufacturer in Georgia should not have the same privilege of going into Florida and drawing logs under that same scale that the Florida manufacturer has?

A. I think there is every reason. Of course, if we had adopted that as a fair and reasonable scale for application on small lot shipments, we would have been in a position where it would have been inconsistent to say that it would not apply reasonably from Florida to Georgia; but I have endeavored to show the circumstances under which it became necessary to do that in Florida, which I supposed you understood. Under those conditions, of course, we do not [fol. 627] think it would be expected of us to apply it elsewhere except where required by State authorities in Florida. I would draw a distinction between the patrons of our line at the State line. We do that on nearly everything. Sometimes your (Georgia) Commission makes lower rates than the Florida Commission does, and although the State line is there, the difference exists. The Florida rates are sometimes lower than the rates in Georgia. They are made by different authorities, and naturally we do not adapt the lowest that we find everywhere for interstate application. It is notoriously a fact that if our operations as a whole were on the level of the intrastate rates, there are very few railroads in this section of the country that could exist. Of course it is understood that the Florida Commission has not required us to establish these rates except that they may be made open. The Florida Commission did not issue any order to us to put these rates in as applied on any number of cars, but they told us we would either have to do that, or cancel the contract, and we stuck to the contract. I don't think our interstate patrons are entitled to participate in that arrangement, not on that basis. On my exhibit 17, where I make a comparison of our interstate scales and show an average result, in making my compilations, I did not include an average of intrastate scales to see what the result would be. This exhibit speaks for itself. Every one of these is an interstate scale. The average is merely [fol. 628] shown really for convenience, to indicate that assuming that each of these tariffs covered an equivalent amount of traffic, that average would indicate how as a whole our new interstate scale compared with the rates that apply on that average. If I had included the intrastate

scales of all the States through which our line runs, this average would have been lower than what it is. I would not venture an opinion as to what extent, because there is such a variation in State scales it would be hard to estimate what the effect of an average would be. In my studies of the movement of logs on our line, I have not made any study to indicate that the preponderance of movement is interstate or intrastate, but the nature of the log movement is generally such that the movement most largely is intrastate. This lower scale or lower average that would have resulted, would move the preponderance of your log traffic, unquestionably. Of course, you understand that this is a comparison of an interstate scale against interstate scales, and it represents only that; in other words, it would cover only such logs as would move interstate, and it does not attempt to show a change in the revenues that we would get on all the logs, including intrastate logs. As to whether the absence of discrimination is more important than the level of the rates sometimes, I might express it in one way, and say that I think perhaps it would be certainly within the bounds of reason to say that 75 per cent of the complaints that are made are against discrimination, and not against [fol. 629] the level of the rates, and I think that on that account uniformity on all commodities is desirable, including logs. It is just as important to have a uniform basis of log rates as it is to have a uniform basis of rates on any other commodity. I did not say that the present high level of log rates from Florida into Georgia versus the low level of rates from Florida to Florida created discriminations against the Georgia shippers, no.

"Q. Now as to your proposal, Mr. Perrin, to remove this discrimination complaint brought by the George- Commission by the use of the present Alabama scale, and which you propose to apply interstate between Alabama and Georgia, and I believe South Carolina and Georgia, was it your purpose to convey to the Commission that that scale should also be used in Florida?"

"A. Why, I made no proposition as to that, Mr. Price, as to the intrastate rates in Florida, I made no proposition as to that."

Of course, we have to look forward to the Florida intrastate situation. If it should not be fixed in this case, it will

have to be fixed by the Florida Commission just as it will be in the Georgia situation, and I made no proposition as to the rates in Georgia, because that is up to the Georgia Public Service Commission. The Georgia rates are not under review here in this proceeding. I was suggesting a scale to apply uniformly wherever we could get—wherever we could possibly get the consent of the State authorities and the Interstate Commerce Commission to let us do [fol. 630] it, and I suggested a scale which I think is reasonable and has been recognized in numerous situations as reasonable. I did not suggest it to apply within the State of Florida because this would not be the proper time to suggest that, nor would it be the proper time to suggest what the rates should be in Georgia.

"Q. I cannot agree with you there, because the Florida rates insofar as this scale is concerned, are under review here, and the Georgia rates are not. Now in adopting or proposing to adopt this Alabama scale, does that carry with it, the full order of the Alabama Commission on logs, billets, blocks and so forth?"

"A. Does it carry the full order?

Q. Yes, sir.

A. It is in accordance with the order of the Commission.

Q. Including logs, billets, and blocks?

A. I understand so.

Q. That is your proposal?

A. Yes, sir.

Mr. Price: That is all."

I didn't say that the present intrastate rates in Florida on the Atlantic Coast Line are discriminatory against parties desiring to use the interstate rate between Florida and Georgia points. We will have to leave it to these gentlemen to say that. I would not express that opinion, Mr. Perry. What I am doing here is to put up a full statement of the facts just as they exist and it is for the Interstate Commerce Commission to pass on that particular question. I refuse to answer the question to that extent.

I am familiar with our answer in this case. We merely state that there may be discrimination, but if so, it is under conditions beyond the control of our company, and of course, under that answer it is up for decision. What I

mean by being beyond the control of our company is the [fol. 631] matter of these contract rates.

"Q. Let me ask you this question, Mr. Perrin: Is it your opinion that the lumber manufacturer at Valdosta, or Thomasville, or Quitman, can compete with the lumber manufacturer at Jacksonville and other Florida points where they have the Atlantic Coast Line rates in Florida?"

"A. I would not like to answer that, Mr. Perry, because in order to answer that it would require a knowledge of the lumber business, and there are so many situations where a lumber man will go right into the other lumber man's territory and compete with him at a much heavier expense, that it is impossible for me to pass upon the effectiveness of competition on lumber."

As to whether or not it is to the advantage of a given business to have an advantage of 200 to 300 per cent in freight rates, I think any advantage is bad, but as to the ability to meet competition I cannot speak definitely or intelligently about that, because I know so little about the competitive conditions that exist between lumber men, and their ability to purchase logs, or to sell lumber, credits, and so forth. I canot pass on that (Tes. pp. 246-249).

By Mr. Thurtell:

"Q. Mr. Perrin, the question that was last asked you by Mr. Perry or Mr. Price, and your answer in regard to it, suggested this to me: It is true, or is it true, that there is an apparent rate disadvantage against any shipper in Georgia seeking to draw logs from Florida for milling in Georgia as compared with a shipper in Florida seeking also to reach the sources of logs in Florida?"

"Exam. Hillyer: Doesn't that call for a conclusion as to testimony offered by other witnesses rather than his own?" [fol. 632] "The witness: Mr. Examiner, may I answer that in this way: I have read Mr. Perry's last question, and my answer, and the answer was made on the understanding on my part that he was still referring to competition, and not to the mere question of differences in rates, and of course, I would not think for—and of course, I

would not have said for a minute, that on its face there is not a rate disadvantage."

Q. Then your answer to my question would be what?"

A. That there is a rate disadvantage."

By Mr. Price:

Q. Would you consider that as a discrimination, Mr. Perrin?"

A. Well, I am hardly prepared to say that."

Mr. Price: That is all."

Exam. Hillyer: That is a conclusion of law" (Tes. pp. 254-255).

[fol. 633] Valdosta, Ga., October 22, 1926.

(Met Pursuant to adjournment.)

Cross-examination of witness (Perrin) resumed.

(By Mr. Cotterill:)

My duties have brought me in contact with the general subject of log rates over our system and its different parts and I know something as to the situation as to log rates in general throughout southern territory on other lines. I have been indentified with the Atlantic Coast Line Railroad in a responsible executive position for quite a few years (Tes. p. 256).

There was a time, if it is not now, when the lumber industry furnished the carriers in the South a very large proportion of their total traffic. To some extent the development of the railroad systems was influenced by the lumber industry; to a large extent it was a region of shorter lines that were subsequently absorbed into what you might call systems. In other words, in two respects the lumber industry itself and its development furnishes the explanation of the development of substantial parts of the railroad mileage in southern territory, more particularly of the branch line service in southern territory. In several situations railroad development took the form of welding together disconnected shorter lines. (Tes. p. 257) I don't think it would be entirely correct to say that

in the case of most of the more important lumber mills of which I have knowledge, there were always extensive negotiations with one or more carriers concerning the place where the mill would be located with respect to the move-
[fol. 634] ment of logs. I would rather say, and I think it would be more true to say, that the shipper makes his location and negotiates the transportation and his rates from that location. I do not believe it would be generally true that the carrier participates in the decision as to where the plant should be located. As an incident of the setting up of the business of any of the large mill operations, there have always been, so far as I can recall, in the more important cases extended negotiations with the carriers concerning the physical methods of handling logs, and as a rule the charges that shall be applied to them. That is true, but not as to location. Of course the lumber just locates itself, and as to the point of manufacture, the shipper himself decides that. The carrier has nothing to do with that. As to whether it has always been in the past at least a matter of importance to the carrier offered the business to determine what would be the volume of the log movement, that would be true, generally, yes, sir, if there were any special arrangements to be made for the handling of the logs. The carriers have been concerned generally not alone as to the volume of the movement, but as to the regularity of it (Tes. p. 259). And they have been concerned with the length of the haul and with the turnaround of the equipment to be used for the particular movement and with the question of services at both ends of the line, and where the carrier's actual expense begins and where it leaves off. Generally in the case of any considerable
[fol. 635] line haul movement of the logs, there are connected with the common carrier rails additional tracks owned or controlled by the lumber people themselves. It is over those rails that the logs are first brought right from the forest to some point of connection with the common carrier rails, speaking now of the cases where the common carrier handles it in the shape of logs. One very common course is for the mill to locate itself right in the forest, and by their tap line or some other form of non-carrier operation, it may assemble the logs right at the mill, and in that event the transportation service which the

trunk line common carrier renders is as to the finished product alone. There is another course of operations involving an inbound shipment of logs by railroad to some extent in distance, which occurs in relatively few situations so far as our company is concerned (Tes. p. 260 and 261). There are cases where it is generally provided by contract that the lumber company may use the equipment of the common carrier for service over the non-common carrier part of the through line. I would not say that that is the most universal practice on the Atlantic Coast Line. In as many cases as not I should say that the log shipper operates his own cars, and his log loaders transfer to the railroad cars at the junction point. As to whether the practice is variable, depending upon the important elements such as the volume of the movement, the responsibil-
[fol. 636] ity of the people involved, and the type of other freight to be handled by the railroad over that particular division, I don't know that those would be controlling reasons. I think largely it is a question that the shipper decides for himself, as to whether it is economical, and the carrier decides as to whether it can afford to allow that particular shipper to use its own cars. In any event, when such use is provided for, there is provision made by contract between the carrier and the lumber company respecting the upkeep and maintenance of the equipment. Generally there is a provision against damage to the equipment. I would not say that there is any provision cover-
[fol. 637] ing wear and tear. As far as I know, there is no basis for assessing charges for wear and tear of the cars. Of course, the user of the car is supposed to insure the safe return of the car to the carrier in proper condition, but I do not think it is the general practice to assess a charge covering wear and tear. Sometimes the industry furnishes the cars almost entirely or in large part and the common carrier uses the cars furnished by the industry. Those cars are subject to the uniform rules governing the use by one line of another line's cars. There are varying circumstances of an important character surrounding the common carrier movement of logs in connection with different lumber mill operations at different points on our system or on other lines, and there is a considerable variety of actual circumstances of transportation, although

I would not say that that produced actually different results in the arrangements made by the railroad company (Tes. p. 263-264). In the past it was true to some extent that the matter of the rates on logs was in large measure determined by the carriers in the light of the particular conditions to be confronted by the carrier in the movement of the particular logs. I would say, though, that the carriers have not been altogether responsible for the level of the log rates. A great many of the log rates were put in over the protests of the carriers, and in some cases after legal contests, and of course, I refer there to State authorities and their actions, so that as a result of the intrastate rates it has naturally followed that the general level of log rates has been reduced below what they would have been [fol. 638] without that influence. Even without reference to the matter of state regulation it was not uncommon that particular rates on logs were made for the particular movements and determined by the carriers with respect to the obligations which they incurred and the peculiar circumstances surrounding those particular movements, but that would carry with it exactly what those circumstances were.

It is true of virtually every other commodity, that most of the southern carriers have had for years, and still have, either published or unpublished, mileage scales. As to whether these are what might be called maximum rates, available in one sense to anybody without negotiation at all, I would say locally that is true. Of course, there are rates higher in one section than some mileage scale in another section. There are some cases where the logs are floated down a stream to the mills. We have logs moving now in that manner, moving by water. The shippers have always had an opportunity to some degree to make the selection of the location which would allow the floating of logs in, when the timber was available to water transportation.

"Q. Assuming those conditions, so that as to instances of that character, that form of competition has been and was a circumstance and may yet be in some cases, a circumstance bearing upon the measure of the particular structure of rates on logs that might be supplied by a carrier for individual movements?

"A. Not in connection with the Atlantic Coast Line Railroad that I can recall has that ever been the case. As I

say there is a movement of logs in several situations by water, but wherever water transportation of that kind, rafting the logs, and floating them on streams is practicable, [fol. 639] it is so far below, the cost of it is so far below what you could expect to get out of it with a reasonable profit, that we do not attempt to meet that kind of a situation."

At least, that has been the Atlantic Coast Line's policy, and I know nothing of what may have been the attitude of other carriers in individual situations.

The carriers of the South in all instances have been the subject of regulation of State authorities (Tes. pp. 266-267). The common carrier movement of logs in the very nature of things, must be comparatively short in mileage, although unfortunately they sometimes move them too far. That is artificially stimulated, or in the nature of making water run up hill.

The great overwhelming movement of logs by common carrier railroad transportation is intrastate in character in southern territory. It is certainly the greater part of the log movement. In 1916 the Atlantic Coast Line Railroad Company in association with others in the south, conceived the idea of undertaking to effectuate something like uniformity or substantial uniformity of transportation charges on logs and all other commodities throughout southern territory. Petitions were filed with the Alabama and Georgia Public Service Commissions, but it is not true that as a rule they made advances. Those propositions as shown by the testimony submitted along with the petitions, were worked out practically along the lines of levelling up and [fol. 640] levelling down. In our own case, of course, this log scale as so submitted to the Alabama and Georgia Commissions represented material reductions from the log rates that were in effect on our system (Tes. p. 270).

"Q. That is, you are speaking of leveling up and leveling down interstate and intrastate?

"A. No, as between different railroads.

"Q. That was partly true?"

"—. Yes, in other words, as a result of these petitions the Atlantic Coast Line would have reduced the log rates in its general territory."

Naturally we wanted to limit the reduction as much as we could. Of course this proposition was based upon the principle of uniformity. And with entirely different situations on different lines there naturally had to be a give and take proposition. On logs it so happened that as to our interstate scale which we proposed to supersede by the scale submitted to the Georgia Commission, it made all-round reductions. As applied to the other movements in Georgia it meant increases (Tes. p. 271). Of course it meant increases on all lines in Georgia. In practical consequence as affecting the traffic under which actual log rates move, it was a revenue increase for the Atlantic Coast Line, but the petition was not filed on the theory that we would have no increase in revenue. In fact both Commissions were fully aware of the fact, and they recognized it, and have actually since granted substantial increases all around. The practical consquence of that compromise was equalization as between carriers and would have resulted in a substantial revenue increase on the log traffic not only [fol. 641] to the Atlantic Coast Line but to all the railroads. You understand that we would not have to submit to the Georgia Commission a proposition to make any decreases in rates. In other words, we could make the revisions by reductions if we wanted to. The sum and substance of the figures agreed upon between the different carriers for uniform application would be nevertheless a substantial general aggregate increase in the cost of transporting logs in the southern territory, and as to Alabama that was authorized (Tes. p. 273). As to the measure or standard of reasonableless which I set up as the basis of comparison in determining the reasonableness of this general log rate structure, I don't know of any more conclusive authority than the Interstate Commerce Commission. I have reference to the Pierpont case and the Southern Veneer case as indicating what the Commission thinks should be the scale in this territory. I don't think, however, that you will find in anything that I have said, or in the exhibits that I have filed, any statement on my part that even we think there is anything unreasonable in our existing interstate scale (Tes. p. 274). An additional test of fairness and reasonableness I think is shown in my exhibits themselves. We have a situation here both as to intrastate com-

parisons and interstate comparisons, and we show the level and revenue results from the handling of various classes of traffic. We show the comparison between that and our interstate scales. We show that we are getting on logs ma- [fol. 642] terially less than on the other grades of traffic which are the lowest grades that we have, so that the question is as to whether our interstate mileage scale—assuming that the rates on the lower grade traffic, such as sand, gravel and so forth, which constitute the large volume of traffic in this section—assuming that those are on a reasonable basis, it certainly cannot be argued that the log rates are unreasonably high (Tes. p. 275). As to whether I derive any impression of reasonableness of the proposed scale merely by comparison between it and the existing interstate scale, I did not make any observation of that kind yesterday, nor did I submit any figures of that kind. What I have done is to prove the reasonableness of our existing interstate scale, and I believe that is absolutely true. Our suggestion as to the adoption of the same scale as in Alabama is merely under the stress of circumstances whereby the Commission in other cases has set as a measure for general application in this territory the so-called Pierpont scale (Tes. p. 277). As to the theory which governs in the determination of reasonable rates now in effect from Florida to Georgia there is nothing exact in any rate. There is no authority in the world that can take a rate in and of itself and by itself, and say it is a reasonable rate. If the rate is fairly compensatory and permits of the movement of traffic, I don't think there is any question of a doubt that [fol. 643] in the absence of a discrimination feature but what it is entirely a reasonable rate, compared with another line of rates, regardless of the character of the traffic on the railroad. That is to say, that on the lowest grade traffic, some of it moving almost at nominal rates, as compared with that low grade traffic this log traffic is not, under the present scale of rates, yielding sufficient revenue (Tes. p. 277). I am speaking of the existing interstate rates.

If one wishes to test the reasonableness of the general rate level on logs throughout southern territory by comparing that with other commodities, one should compare it with other commodities and the rates thereon moving

throughout southern territory. Naturally a comparison on a commodity that does not move is not worth much.

"Q. Precisely. Why, for instance, do you make a comparison of a proposed log scale which you conceive to be reasonable for application throughout the south, with a mileage scale on brick between two points, or in a certain restricted section of the south where brick is not manufactured or shipped at all?

"A. Well, if there is any section of the south where brick is not manufactured, I would like to go out and see it. If there is anything next to lumber that is more universally manufactured, in all parts of the south, it is brick."

The transportation charges on brick for general southern application are the consequence of proceedings before the [fol. 644] Interstate Commerce Commission in I. & S. 1885. I think that is the number, and in that instance the mileage scale for brick was prescribed, with a measure of grouping of origin points permitting the use of the scale from either a central or key point to the group. I do not know whether that scale was put into effect intrastate in Florida. I show, however, what is our intrastate scale in Florida.

"Q. Mr. Perrin, among the comparisons which you are here making in support a general and approximately uniform rate level on logs for southern application, is one with an interstate mileage scale on sand and gravel, between the state of Georgia and the state of Florida. Would you say that these rates that you have set up in that way on various of your exhibits may be taken by this Commission as an indication of what is the normal existing rate level on sand and gravel for movements of that length.

"A. I don't think there is very much difference, Mr. Cotterill, but if there is any question about the propriety of that comparison, I will be very glad to run a comparison of logs against a lower scale—against the lowest scale of sand and gravel rates that you will find in the south."

"Q. What I have in mind at the moment, Mr. Perrin, is this: You are aware, are you not, that just next month, in a couple of weeks, there is to be argued before the Commission by some of the counsel present, a proceeding in a nature of a rather general investigation of the structure of sand and gravel rates in southern territory?"

"A. I have no connection with that, but I understand—"
"Q. You know there is such a proceeding pending?"
"A. Yes, sir."

I can imagine there must be very few instances in which [fol. 645] considerations other than competitive forces brought about in southern territory individual point to point rates covering large movements of sand and gravel in specific cases (Tes. p. 280). A great part of our concrete aggregate moves on mileage scales throughout our system, and we have very few point to point rates on that kind of material. The Coarse Concrete case before the Commission is entirely foreign to this particular part of the territory. You are talking about the situations that are somewhat removed from this situation between south Georgia [fol. 646] and Florida. In other words, if there is anything that really is close to a uniform application of mileage rates, it is on these road building materials on our whole system. The road building work is going on from end to end of the line today, and we have made and have succeeded in securing the application of a uniform mileage scale in all of those sections. I did not say that the mileage scale shown on my exhibit 18 and succeeding exhibits on sand and gravel were typical of the standard rates of that class of traffic throughout southern territory, and I say to you now that I am willing to substitute for it the lowest scale of rates in the Southeast, just place it in that column and let it speak for itself (Tes. p. 282).

I believe there is a general proceeding pending before the Commission involving the general rate level on cement in southern territory. I have not said that the tables on cement shown in my exhibit 18 represent the general existing rate level on cement in southern territory, and I have not asked the Commission to assume that that was so stated or inferred. In other words, I have represented there what the rates between south Georgia and north Florida are on cement, as compared with the rate between south Georgia and north Florida on logs. That is the only thing that that exhibit is intended to show. Cement is manufactured in Georgia at Rockmart and other places. Rockmart is just a little beyond Atlanta (Tes. p. 284). I do not know the relative size of that mill. I did not make any

[fol. 647] comparison of the rates I have shown here with Rockmart rates. If you think there is any intention to indicate something to the Commission that is not right, I will be glad to show a comparison between the mileage scale from Rockmart today with the low rates between south Georgia and Florida. I would like to show that (Tes. p. 285).

I should think there would be movements of lime under the mileage scale on lime from Georgia to Florida, which is shown in my exhibit. I should not think that that scale is very far off from the general rate level on lime in southern territory. I am only basing that statement on a general recollection of the existing rates (Tes. p. 286). There is no reason that I know of why the rates in other parts of the southeast should be taken as typical of the rates between south Georgia and Florida any more than the rates that actually exist between south Georgia and Florida. It will be just as much of a strain to say that the mileage scales that are applicable elsewhere in the southeast would fairly represent a comparison between south Georgia and Florida. Even if I should substitute the figures for the figures shown in my exhibit it would still appear that our proposed log rates are lower than on these other commodities. I think it would appear very favorably. I would not say that they would be still lower because I haven't got the figures before me; I haven't seen them. They certainly would not discredit the log rates (Tes. p. 287). Undoubtedly in the distribution of this total traffic burden between specific descriptions of traffic, some commodity has [fol. 648] to have lowest rates of all. The mere fact that you find any one commodity taking lower rates than another, does not of itself in part condemn the rate level on that lowest rated commodity. There is nothing in the characteristics of logs as freight traffic that would justify any lower level of rates on logs than on sand and gravel, either as to the transportation revenue results, or from the value or claim damage standpoint or any other transportation features that you might consider (Tes. p. 288). In saying that there is no reason why the rates on logs should be lower than on brick, sand and gravel, I did not say cement. You are speaking of sand and gravel. You deliberately said sand and gravel. Then the record shows

that the answer does not refer to coment. As to the circumstances which controlled me in the conviction one way or another, as to whether the rates on logs should be lower or higher than the rates on these other commodities, they are all cheap, they are all heavy, they are all without claim risks, there is no condition that I know of, with the possible exception of cement, which might have a higher value that would probably justify a lower rate on logs. I don't know that I could say that there should be the same rates on brick, sand and gravel, lime and cement. I think this; that there they are all down to minimum figures. I stated that rates on sand and gravel and lime should be lower than on logs, not higher. That was the intent or pur- [fol. 649] pose of my answer. In other words, I am not trying to fix a difference between the logs and the road building materials (Tes. p. 290). Conversely, the logs should carry higher rates than sand and gravel. I do not wish my first statement to stand, but I wish to state that logs should carry a higher rate than sand and gravel, yes. That was the purpose of whatever statement I made, whether it was involved or not, I don't know. I think as a general proposition it is worth more to the shipper to ship logs than it is to ship sand and gravel. I have nothing else in mind. Not from a transportation standpoint. We do have this, that there is more risk in the handling of logs than there is on these other commodities. The log traffic is to a certain extent dangerous. There is hardly a train that is run that does not drop some of the logs along the road. I won't say there is hardly a [redacted], but there are many logs that fall off trains as they go along, and all that is dangerous (Tes. p. 291). I recognize that the element of what [fol. 650] the service is worth to the shipper properly enters into the question of reasonable rates and the comparison of one commodity with another. I think we should get more money for carrying silks than cotton, irrespective of the similarity of circumstances. We have got to distribute the rates in some manner so that the lowest grade traffic will bear a less burden than the higher grade traffic. The comparison with cement and other commodities was made only because these other commodities that are used are the lowest grade traffic that we handle. The comparison of the log rates with the cement rates does

not condemn the cement rates as being too high, because we concede some higher level to cement than on these other grades of traffic, but as between sand and gravel, about which we are now talking, there is no difference that I know of that would justify a higher rate on sand and gravel than on logs (Tes. p. 292). As to the propriety of the higher rate on brick than on logs, it is rather a hard thing on the witness stand to pass judgment on what rate adjustments should be on the entire line of one commodity. I do not say that the rates on logs should be as high as the rates on brick. I do not say the rates should be made on that basis. I merely show these comparisons to show the low level of earnings resulting from the present rates on logs. I do not undertake to say that these comparisons indicate that those earnings are too high or too low. I have therefore selected these figures as the proper rates on logs and I attempted to justify that by showing that it yields low revenues as compared with other even lower grade articles. [fol. 651] (Tes. p. 293). We fixed that as the scale on logs, and that is what we are trying to defend as a reasonable scale of rates. I do not say that we are not getting enough from the logs, not in that particular connection. I do say that our log traffic as a whole is being handled on too low a basis. My comparisons are intended to indicate to the Commission what in fact are our earnings from these different descriptions of low grade traffic, and with the necessary inference as to whether the log rate is reasonable. I don't know that I could say that sand and gravel alone are the articles on which I have pronounced convictions as to what should be the comparitive rate level with logs. Perhaps if I had looked through the tariffs and found other commodities I might make similar comparisons, but I merely selected the very lowest grade of stuff that we handle in this section, and stuff that is actually moving in large volume (Tes. p. 294). Now, I could go out and find comparisons with traffic moving in other sections that would not mean anything at all in this section. If you suppose the actual log rate earnings were even lower than they now are, and you compared such lower log earnings with the earnings derived from these other descriptions of traffic, that mere comparison would suggest to my mind that the earnings on logs were too low, if the other rates were right. There is

no yardstick that you can measure it by inches. You have [fol. 652] got to use your judgment in making any rate structure. It is only by comparison of values and transportation characteristics, that you are able to reach a proper conclusion (Tes. p. 295). I think this, that any characteristics that the log traffic has ought to be considered in making log rates just as you would consider any characteristics in connection with any of these low grade commodities. It is practicable, yes, to have the same level of rates everywhere in the south in the case of your merchandise traffic moving throughout the whole of southern territory and apt to move at any time from one point to another. That is true of many of the higher grades of commodities and some of the lower grades of commodities as to which the carriers themselves have proposed mileage scales. In the case of these commodities we have varying and shifting movements of varying lengths and indeterminate destinations. This is true because of this fact, that the desirability of uniformity is such that in many cases it is a very expensive change. In many situations it costs some individual carrier a large part of its success, that is the establishment of uniform mileage scales or uniform rates on all traffic on mileage scales.

"Exam. Brown: Let us confine our testimony to the commodities covered by these exhibits.

Mr. Cotterill: The question I had asked was to obtain from the witness, if I could, a concession that logs did not lend themselves anywhere near so readily to the process of unification of rates in disregard of specific conditions as may be true of other and higher grades of traffic.

The Witness: Well, I think they do lend themselves in just the same way that other traffic does."

Of course, it is at a sacrifice in some situations, but you do get uniformity, and that is a very desirable considera- [fol. 653] tion. I cannot foresee what the sacrifice to the Atlantic Coast Line Railroad would be if the log rates in Florida were to be advanced to anything like this existing level which I propose.

I should say that speaking in a very rough way—it is purely an estimate on my part—half of the logs that we handle produced no outbound product for transportation

by our line. A very large part of the logs that we handle from North Carolina, say, go to Norfolk, are sawed into lumber, and the lumber goes east where we do not go. Perhaps the largest individual movement of logs that we handle in South Carolina go to western North Carolina furniture manufacturing points, and there we do not handle anything. In the case of Georgia we probably handle more products relatively than in any other state. In the case of Florida the movement of logs far exceeds the outbound movement of lumber by our railroad (Tes. pp. 300-301). I might say here, for instance, just to illustrate that, that during the last two years we handled from the Perry branch to the Brooks-Scanlon Corporation, this is for two years [fol. 654] ending September 30, 1926, 31,721 cars of logs, and we handled out in the shape of lumber, 1,586 cars. Now if it be proper to equate the lumber production with the use of logs on basis of three cars of logs for one car of lumber, that means that we handled just 15 per cent of the output of the mill. Now, as I say, in the other stations further north, we do not get any of the outbound movement. Of course, there are scattered movements into these states where the logs move into the mill and the lumber moves out on the Atlantic Coast Line, but in the aggregate I would say that we do not get a haul on more than 50 per cent of the logs that we handle. From the standpoint of tonnage alone the log movement is of more importance to the Coast Line than the lumber movement is under the existing situation, and it really makes it distressful to us inasmuch as we have to count our dollars on what we get from hauling logs, and we are hauling logs on the basis we used to haul them on when we got the lumber (Tes. p. 301). I do not know whether the conditions generally are the reverse on other carriers in other states or not, but at least it is true that so far as concerns the Atlantic Coast Line Railroad Company, we are so situated that the revenue to be derived by our road from the movement of logs is of keen importance by itself, irrespective of the revenue derived from lumber.

"Q. And that would be an additional circumstance which would prompt the Atlantic Coast Line Railroad Company in its negotiations with other carriers to insist upon as high a rate level on logs as you would be able to in those

conferences secure agreement to from the other carriers?

"A. Well, I would not say as high as we——

"Q. As high as the other carriers would agree to?

"A. I don't know that that is altogether true, because I don't know the conditions under which the other carriers [fol. 655] operate" (Tes. p. 302).

When a log falls from a car the consequence is generally a wreck, or frequently a wreck, but so far as the logs themselves are concerned, there is substantially no claim liability.

I would not try to fix the value on these logs. Logs vary all the way from Virginia to Florida.

"Q. Well, when you made mention of the values of logs as compared with the values of other commodities, and the ability of each to stand a given rate level, was that statement made without knowledge of what those values of logs are?"

"A. Well, at one time I knew a good deal about the value of logs, but the best I can say now is that the log value has of course grown with the increased scarcity of timber. Now, just what it stands today I would not try to say."

(By Exam. Brown:)

"Q. You are testifying now from hearsay, are you not, rather than from your own actual knowledge?"

"A. I am no lumberman."

(By Mr. Cotterill:)

Q. However, I will ask you, Mr. Perrin, this, please. As a general rule, when there are movements of logs by common carrier railroads to saw mills, are those movements what might be thought of as nearly the equivalent of train loads?"

"A. That varies. In some cases it will constitute a large part of the train, and in other cases it will be small."

"Q. You understand my question, did you, to be confined to movements of logs to saw mills?"

"A. Yes, sir."

"Q. And you say even there in some cases the movements would be in substantial train loads, and in others, it would be small and mixed with other freight?"

[fol. 656] "A. Well, in no cases, unless there is the operation of a special log train is the train composed entirely of logs. Frequently logs constitute the larger part, and frequently a very small part of the consist of those trains (Tes. [fol. 657] p. 303). That depends very largely on the volume of the shipments, and that is about equal to saying that if a man buys in single car lots, or a dozen car lots, he ships in small quantities from this or that station. If a man owns his timber in the woods and cuts it and ships it in regular trains, he perhaps ships larger, more per day, than the other shipper to whom I have referred, and that varies very largely. It is true in some cases of saw mills of any considerable size the source from which that mill obtains its logs is a fairly constant one, and it derives its supply from more or less regular movements in substantial train lots, and yet I know of some cases where it is a marvel to me how they run at all, because they may ship from the north today and the east tomorrow and the south next day. Those are not comparatively rare situations. We have had in the last two weeks to review that whole situation in South Carolina, and it was astonishing to me to note how haphazard the movement of logs is to those plants. I don't know just how that movement in train loads is in Florida; have not investigated the movement in regular trains. I do know that there is a good substantial movement other than that that is moving in regular trains. Just how many they move in each of those regular trains, or how it would average, I would not be able to say (Tes. pp. 305 and 306). There are many movements in Florida under this 170 mile Cummer scale that are not in [fol 658] special log trains.

On my Exhibit No. 21, where I have stated the percentage which certain log rate scales bear to an underlying mileage rate scale on lumber, I would say you might infer that it has been customary in certain situations to observe a rate relationship between lumber and logs. Now, that does not necessarily mean that I think that the lumber rates ought to be the guide in making the log rates, but I prepared that exhibit, and I made the statement in my testimony that the purpose of it was to show that our interstate mileage scale bears a percentage relationship to these lumber rates to

Meridian as fixed by the Commission and as they exist in the underlying mileage scale to which you refer, not inconsistent with what the rate authorities in the Georgia Commission and in the Florida Commission have observed as a proper relationship between logs and lumber. I also referred to the fact that the only other case that I know of, with which I am familiar at least, is in South Carolina where for many years they have handled log rates at 80 per cent of the lumber rates. On logs they have no mileage scales, it is a classification provision that logs are classified 80 per cent of the lumber rate. In that State we have a few specific point to point log rates that are less than the classification basis. From my Exhibit No. 21 it is not my view that there is a necessary connection between the rates on lumber and the rates on logs. The data upon which this exhibit was based was furnished me by our auditing or ac- [fol. 659] counting department. It was reported to me that the total revenue of the Atlantic Coast Line Railroad derived from the handling of logs in the month of May, 1926, was $121,015.66. Within that total is the revenue which the Atlantic Coast Line Railroad Company derived from the transportation of logs under the so-called Cummer scale. Our accounting department did not segregate the revenue derived by our railroad from the movement of logs under the Cummer scale, and our traffic department has not furnished any statement of the revenue derived during the period of time from the movement of logs in train loads, as distinguished from miscellaneous commodities. The accounting department has not furnished a statement of the revenue derived by the A. C. L. under the several contracts to which reference has heretofore been made (Tes. p. 309). I do not know approximately the revenue derived under the contracts which are of record in this case. I would not be able to question or deny or affirm your statement that more than half of the total revenue derived by the Atlantic Coast Line for transportation of logs on its whole system is derived under these contracts. We have no figures to segregate one special movement from any other part of the general movement of logs. So far as the amount of revenue is concerned, under the train load movements under the Cummer scale, I cannot estimate it. Of course I do know that the movement under these log con-

tracts in every-day train movements is a very large move-
[fol. 660] ments of logs. As to whether it constitutes a very large proportion of the total revenue derived by the Atlantic Coast Line Railroad for the transportation of logs throughout its whole system, I would have to prepare statistics to say. I would not try to estimate it. In all of this evidence which I have submitted, in chief, my purpose has been to establish the reasonableness of the existing interstate charges on logs from stations on our line in Florida to destinations on our line in the State of Georgia, that is, from north Florida. Nevertheless, we are proposing to reduce existing rates from north Florida to Georgia. The rates we are undertaking to establish from north Florida to Georgia are less than what we think would be reasonable rates. I think it perhaps would be well for me
[fol. 661] to explain just why we adopt as our proposal the Alabama scale (Tes. p. 312). In response to the petitions to the Georgia and Alabama commissions, the Alabama Commission acted and established a certain scale. The Georgia Commission acted and established substantially the same scale, in fact identically the same scale, for 30 miles and over. We thereupon concluded that in the interest of uniformity we would apply between points in Alabama and points in Georgia, and within the State of Georgia, the Alabama scale, notwithstanding the fact that in a few instances it would be lower than the Georgia Commission had authorized. We likewise proceeded to handle with the South Carolina authorities to adopt the same level of rates, which they have agreed to. In that State there will be both increases and reductions. In the case of a few destinations it would increase the rate ranging from one fourth to one half cent per 100 pounds. In all the rest of the State it would reduce the rates practically the same amount. We proceeded at the same time to establish the Alabama scale between South Carolina and North Carolina, and between North Carolina and Virginia. Independent of our proposition here we have been working all along toward the adoption of the same uniform level of mileage rates. Now, it so happens that the Interstate Commerce Commission has fixed in two of the important situations almost identically the same as we get
[fol. 662] from the Alabama scale. There is a difference

only really in progression, and we are here asking that the Alabama scale be adopted in preference to the scale ordered by the Commission in those cases, the South Carolina cases, because of the difference in the progression.

In other words, we think it would be unfortunate to destroy uniformity by not adopting for interstate application from South Carolina to Georgia, a scale that differs only in minor details from the Alabama Commission scale, which is already in effect, particularly in view of the fact that under the scale that has been ordered by the Commission in these South Carolina cases, we would get that uniformity by making reductions for three blocks of distances, and making increases for three blocks of distances of one half cent, and reduction in four blocks of distances of one half cent. The revenue effect of these changes in those two instances, on this Alabama scale, would be to reduce South Carolina and increase North Carolina. As for Georgia, it would be an increase as against the present—I would not say it is such a large increase there. In other words, it would be almost identically the same scale as the Georgia Commission put out and suspended. The substitution of our proposed scale would effect some increases in Georgia, but I would not call them extremely large increases. The effect in Alabama is identically the same as in Georgia. [fol. 663] What would be its consequence if applied in the States of Tennessee and Kentucky would be a tremendous reduction in Tennessee on hardwood (Tes. p. 315). If substituted for existing rates within Florida, the consequence would be a very material increase. I have not even figured on Virginia, because we have so little mileage in Virginia; that it is unimportant, I am quite sure, though, just from general knowledge that it would reduce the rates in Virginia. We, however, do not haul any logs in Virginia. The question of whether the proposal would cause substantial increases in Georgia, Florida and Alabama or not depends on what you mean by substantial. It would produce in the Carolinas probably more reduction in revenues than increases, because the State of North Carolina has nearly cut out the logs, and there are more logs handled in South Carolina than in North Carolina. Just how much we would be affected in Georgia, I have not figured on. I do not even recall just what the present scale of rates in Georgia is. Of

course they were restored since the proposed scale was suspended, but my impression is that the increases are not so tremendous. In Florida it would increase the log rates.

There is no substantial claim liabilities on logs. I should imagine there would be some claim risk in the case of movement of cement in so far as rain is concerned, if the cars happened to be in bad order. That is perhaps true also of lime.

In connection with the present log operations under the so-called Cummer scale in Florida we have a type of service [fol. 664] contract in addition to the so-called Carpenter-O'Brien contract, but not in the case of the Brooks-Scanlon Corporation. We have applicable to others and for other parties. We have such a contract with the Wilson Cypress Company for the transportation of logs somewhere over in this same general territory to Palatka; that is in the Perry section to Palatka. We have such a contract also with the Putnam Lumber Company for the transportation of logs from Clara to Milldale, Jacksonville. We have no such contract with the Cummer Cypress Company from Lacooche to Otter Creek. We do not have such a contract with the Cummer Cypress Company for the movement from Otter Creek to Lacooche—not that I know of. It is possible that such a contract may exist and I may not be aware of it (Tes. p. 319). I have not read those contracts, the service contracts, and I must say I don't know just what the terms of them are, except that they are along the general lines of our log train contracts, but whether they have any provisions about repair of equipment and those features I cannot speak now.

As to the manner in which this movement, this Brooks-Scanlon movement, actually occurs, I have never ridden it, but the contract as to the operation of the train I think speaks for itself. As to whether that train, made up of carloads of logs, is delivered to us, ready made up, I can only say that that is the provision of the contract, that that will be done. Now I have not ridden the train, nor watched [fol. 665] its operation, but I assume it is being done in accordance with the terms of the contract—in accordance with the terms of that contract. It is my understanding that it is delivered in solid trains to the shipper at the other end.

It is my understanding that the service rendered to the

Putnam Lumber Company is about the same; as to the Wilson Cypress Company, about the same (Tes. pp. 321-322).

My recollection is that there was a contract between the Cummer Cypress Company and the Atlantic Coast Line Railroad Company with respect to the movement of logs in train load lots from Otter Creek to Lacooche, and if I am mistaken of course it can be corrected, but my further understanding is that contract is not now in existence; as far as I know, we have never had a contract covering that Lacooche movement. I do not know whether the movements [fol. 666] to which I have referred are in the night time or the day time. I do not know what the turnaround is on the equipment. I do not know whether it is 24 hours, 48 hours, or what (Tes. p. 322).

The Atlantic Coast Line Railroad purchased the old Jacksonville & Southwestern in the year 1904, from the Jacksonville & Southwestern Railroad Company, as my recollection goes. I think that was the corporate name of it.

I do not know anything about a Mr. C. W. Chase, who lived in Alachua County about 1903 or 1904, except as he is mentioned in the contract between the Cummer Lumber Company and the Jacksonville & Southwestern R. R. The negotiations for the Carpenter-O'Brien contract were made so far as I know by Mr. R. A. Brand, the vice-president. Our company built track extensions, and other means of transportation, to reach the so-called Carpenter-O'Brien mill site from the tracks of the Atlantic Coast Line Railroad Company at that time from Milldale to Eastport, about four miles. I am not sure whether there are any navigable streams intervening. The Carpenter-O'Brien plant is the terminus of that line (Tes. p. 325) (Tes. p. 325-326). I have no idea of the cost of that improvement.

Mr. Examiner, a few minutes ago I made a statement in reply to a question that in so far as I knew we have no contract for the service of handling logs to Lacoochee for the Cummer Lumber Company. We are advised by Mr. Arthur Cummer that such a contract is in existence, and I therefore desire to change my answer in the affirmative (Tes. p. 326).

[fol. 667] "Mr. Cummer:)

We have a service contract between Otter Creek and Lacoochee with the Atlantic Coast Line Railroad Company, in the name of the Cummer Cypress Company."

The Witness: Referring to my exhibit No. 23, this line of rates is proposed as shown under description C on this exhibit as what we offer as a reasonable scale to apply respectively from north Florida and from south Florida, to Georgia, and it is merely in connection with the consideration that the Commission gives to this case as to our interstate mileage scale now in effect. That reply is stated in words on the caption of the exhibit. The Georgia Commission having asked the Interstate Commerce Commission to prescribe maximum reasonable rates from Florida into Georgia, we are proposing these scales in lieu of the existing scale (Tes. p. 327-328). With respect to yellow pine lumber, as to how far, as a practical proposition, such a scale should extend, it would meet the necessities of the case if the scale should extend to 540 miles. What I mean by the necessities of the case is this, that the longest distance from a Florida point to a Georgia point would be 540 miles. I do not mean to say that we could expect logs to move that far, but in order to cover the entire situation with the scale, it would be necessary to extend it to 540 miles. Now, that remark, of course, is directed to the scale from south Florida, because that extreme distance of 540 miles is from the south Florida section. Exhibit No. 24 has the Pierpont [fol. 668] scale on it, and I am familiar with the circumstances surrounding the movement of logs into Savannah under which that scale was prescribed. Those rates were made for application on yellow pine logs. They were for manufacture into lumber at Savannah. I was not a witness in that case and was not present at the hearings. The line from those points into Savannah over the Southern was main line, single main line mileage into Savannah as distinguished from a branch line. As to whether log trains move the same as ordinary freight I am afraid my answer would not be worth much. I do know whether the presence of log trains on the main line would retard the movement of the fast passenger traffic. In fact, I mentioned yesterday the interference on the passenger tracks by log trains in

the way of faster trains, and for that reason it is always necessary to restrict the parts of the line on which log train operations are permitted, but I understand from your question as to whether a train of general cars moving over the Perry branch to Jacksonville would move faster than a train of logs over the Perry branch to Jacksonville, and that of course, I do not know. That line of the Southern into Savannah over which these rates were prescribed is main line trackage. On my Exhibit 24, the fractions in that scale have become rather irregular. I am speaking of the Pierpont scale. That scale as the record would indicate was established on basis of per car, and under the rules for the disposition of fractions in the general percentage in- [fol. 669] creases, it had the effect of casting one half dollar one way or the other, and when we got a hundred pound rate out of that per car rate, we got a different result, and as a final result the progression in the inbound rates has been very much disturbed (Tes. p. 330). That is one of the main reasons why I have selected the Alabama scale rather than the Pierpont scale. The purpose of the distinction between the south Florida and the north Florida scale to Georgia points is primarily to wipe out the different descriptions that now exist, and also to make a slightly higher rate from south Florida; of course, appreciating the fact that even on the basis proposed very substantial reductions would follow in the rates from north Florida to Georgia. You will note by the comparison that the rates we propose from south Florida are very greatly less than the existing rates from south Florida.

"Q. Yes. From the heading on your exhibit 23 it is not clear whether that line for north Florida was intended to run by way of Palatka or by way of Lake Butler. As I understand you, from the explanation you made to Examiner Brown, you mean the line running through Lake Butler, Burnette Lake, and on the line to Palatka?"

"A. The line runs through Baldwin, Lake Butler, Hainesworth, Burnette Lake, and dips down to include the line to Gainesville, then from Burnette Lake through Alachua and through High Springs. Points on and north of that line are the north Florida points, and points south of that line are the south Florida points, as I have designated them" (Tes. p. 331).

A higher scale would apply from Palatka and the line between Jacksonville and Palatka. As to the fact that the [fol. 670] proposed scales for north and south Florida are so nearly alike, you will notice that for fifty miles the south Florida scale is the same as the present north Florida rate—I am going to be perfectly frank about that and say that when you get down into the lower part of Florida it is not very probable that we are going to be burdened with log traffic, but we have a principle here that is involved as to the general construction of rates on all commodities to and from Florida. Frankly, I don't think it is going to cover any very large movement of logs from south Florida into Georgia. Of course, we have rates in effect today for those long distances, but they are not actually applied on any moving logs. The present Florida to Georgia rates are 16 cents for 450 miles, that is the end of the scale, the Alabama scale 15 cents, and the south Florida scale, 17 cents—on Exhibits 23 and 24—Alabama, 15 cents, but we are not willing to put in the flat Alabama scale, running to 15 cents at 450 miles. We would not like to do that, Mr. Examiner. It is not a question of what the rate is, so far as any movement is concerned, but as I say, we have a principle here that really governs us in making a proposition as to the south Florida rates. Well, we are going to have uniformity on general principles, that is, class and commodity rates in the whole southeastern situation, except in the peninsula of Florida. The Commission has recognized that. It does not make any difference as to the actual movement, and we would prefer that the principle be fol- [fol. 671] lowed rather than just an arbitrary adjustment of rates, realizing that it is not going to cover any actual movement of logs. Our proposed south Florida scale starts at fifty miles, which is the minimum distance between south Florida and the Georgia State line.

Redirect examination.

(By Mr. Carl Davis:)

The average weight of the cars moving under this Cum- [fol. 672] mer scale into Jacksonville on the Jacksonville & Southwestern line could be indicated in the way that I have done. Of course it does not cover the entire movement,

but I have averaged the weights for 983 cars of the logs for both the Brooks-Scanlon Corporation and the Putnam Lumber Company, which produced 60,200 pound per car. As shown in the exhibits that I have filed, the revenue on basis of that weight is $20.47. That movement was from Carbur, to Milldale, and from Perry to Eastport, the average haul for the two movements being 158 miles. This produces a per mile earning of 12 cents. Now there seems to be some misapprehension that some profit accrues to the Atlantic Coast Line Railroad out of their revenues derived from the logs handled on the Florida intrastate scale to Eastport, and there seems to be some impression that the operation of these log trains is very profitable to our company. Of course it is impossible to make freight rates strictly on basis of the cost, because in fact it is practically impossible to establish the exact cost of any transportation service. Nevertheless, we would like to remove any incorrect impression that may exist that there is a very large amount of profit in the operation of these log trains, and while appreciating the fact that it is impossible to show precisely the actual cost, we have asked Mr. White, superintendent of transportation of our company, to make a cost study covering the operation of the Brooks-Scanlon log [fol. 673] trains, and he is the witness who will follow me on the stand.

"Examiner Brown: It will be impossible to conclude the hearing today, and under the circumstances it is apparent that we should postpone the hearing to a day to be hereafter fixed" (Tes. p. 336).

J. Lowell White was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

(By Mr. Carl Davis:)

My name is J. Lowell White; superintendent of transportation of the Atlantic Coast Line Railroad Company, Wilmington, N. C. My railroad experience covers a period of 23 years beginning in 1903 in the freight auditing de-

partment of the Chicago, Burlington & Quincy. With that road I spent three years mostly in accounting work, both agency and in division superintendent's office. Next for three years I was connected with the president's office of the Wabash Railroad, where my duties included efficiency and cost studies and much figuring with regard to new equipment and the purchases of material and supplies. For four years thereafter I was purchasing and supply agent for the Frisco Lines in Louisiana and Texas, which lines are now a part of the Missouri Pacific system. Another year was spent in the creosoting business at Galveston, Texas (Tes. p. 337).

[fol. 674] In 1914, and for the last 12 years, I have been with the Atlantic Coast Line, first for one year in the president's office, where I had to do with joint line accounts, and thereafter consecutively as assistant to general superintendent of transportation, Wilmington; superintendent at Norfolk, Va.; superintendent transportation of the first division of Rocky Mount, and now, and for the past eight years superintendent transportation at Wilmington, with jurisdiction over the system.

In my work as superintendent transportation, I have had to do with the preparation of cost and efficiency statistics in connection with the general operation. I have had occasion to examine the cost of moving these logs in train loads between Perry and Jacksonville, and I have accumulated data in the form of an approximation that is satisfactory to me at least of the minimum cost of moving these trains. I here offer as exhibit No. 25, consisting of a statement marked item J, which is supported by items lettered A to I, inclusive. On this exhibit I have made as close an approximation of the cost of this service as it is possible to obtain from our records.

For instance, item A, covering the cost of road movement, is based on the actual wages paid train and enginemen on the road for all log trains run in September, run in the Brooks-Scanlon operation between Perry, Carbur and Eastport.

It also includes statement of fuel and supplies and the cost of hostling and turning engines at Moncrief, Jackson-
[fol. 675] ville terminal, round house.

Under item B will be found an estimate of cost for operating the type of yard engine used in service between Mill-

dale and Eastport, Milldale being the terminus of the road operation, from which the logs are transported by yard engine to Eastport where the Brooks-Scanlon mill is located.

The cost units are based on mechanical department monthly cost statements for the third division, which comprises most of the Atlantic Coast Line lines in Florida, and include both road and yard engine costs. The miles run is based on six miles per hour, which is accepted by the Interstate Commerce Commission as the average hourly performance by yard engines. The engine cost of $14,275, on which interest and depreciation are based is the cost of the engine in 1901. The same type of engine today would cost from $24,000 to $25,000.

The time of each trip is based on the time used by yard engines in handling logs at Eastport and in hauling them from Milldale to Eastport; including return movement of empties. Six hours is what the superintendent of terminals of the Atlantic Coast Line at Jacksonville asserts is the time necessary for this work.

Item C is based on the fact that it takes an assignment of five locomotives in a pool to perform the Brooks-Scanlon and Putnam log train service.

As shown by item D, the relation of car lines in these two [fol. 676] services is as 32.4 per cent and 67.6 per cent; the latter figure being the percentage chargeable to the Brooks-Scanlon trains. That figure, therefore, is used as the proportion of the total interest and depreciation on five locomotives which should be assigned to the Brooks-Scanlon service. The interest and depreciation item on cars is self-explanatory.

Item E, maintenance of equipment locomotives, is based on train miles run rather than car miles for the reason that car—that our cost figures for locomotive repairs are based on engine or train miles rather than on a car mile basis; but the amount charged to the Brooks-Scanlon service is figured on the basis of the Brooks-Scanlon proportion of car miles to total car miles run in the Brooks-Scanlon and Putnam services.

Item F shows the amount to be paid by the railroad for use of 75 Brooks-Scanlon cars in the month of September.

Item G, maintenance of roadway, assumes that were these

log trains, which perform some 60 per cent of the car miles run on the line between Jacksonville and Perry, discontinued, that it would be possible to reduce section forces one man per section, of about eight miles each, in this territory, and that there would be an equal saving in material, the total labor and material amounting to $104 per section.

Item H, maintenance of equipment, covers the actual amount paid for maintaining the cars assigned to the Brooks-Scanlon service for 12 months, with a proportional [fol. 677] amount assigned to the month of September. Also, there is added the cost of repairmen at Eastport and Carbur, and half the salary of a repairman at Perry, which men are employed solely for the purpose of looking after the cars assigned to the Brooks-Scanlon service. From the total is deducted the average amount billed against the Brooks-Scanlon Corporation for the maintenance of their cars one month.

Item I shows first, the total proportion of Atlantic Coast Line operating expenses of $47,265,226, not including taxes and equipment rentals, for the first eight months of 1926, which, under the I. C. C. rulings, are classified as chargeable to freight. This amount, $33,394,694, has been divided between direct and indirect expenses. These terms are used merely for the purpose of this cost study, to differentiate between those accounts in which direct charges have been made to this service on this statement and those accounts for which no amount is included in the figures shown on the statement.

Under "direct" are also included accounts which cannot have any relation to the cost of this service, as No. 408, floating equipment operation; No. 267, paving, and other similar items.

Under the heading "indirect" are included supervision, account No. 371; dispatching of trains, account No. 372, and similar items, while under "direct" 55 are included items such as yard conductors and brakemen, account No. 378, and fuel for locomotives, accounts Nos. 382 and 394.

[fol. 678] In preparing the summary shown under item J, the ratio of the indirect to the direct expense of 28.5 is used as an arbitrary figure to cover the proportion of all indirect expenses which should be added to the direct cost to cover supervision and other indirect items.

In making up the statement shown on item J, after totalling the first five items shown there has been deducted 3.8 per cent of that total as a proper subtraction because of other traffic than logs hauled in the Brooks-Scanlon log trains during the month of September. The items below that subtraction are properly shown without deduction for the reason that the amounts indicated are direct charges to the equipment used in the Brooks-Scanlon and no other service.

I use a cost price on the yard engines because the present price is greater, and I used the cost price as to the road engines. The present price is much greater than the cost (Tes. p. 342). It is the judgment of the chief engineer of the Atlantic Coast Line railroad that if these log trains were discontinued the reduction of the section forces would be by one man only. This was furnished to me for purpose of use in this study. I have used nothing in the way of cost to cover either taxes or a return on the value of the railroad which is used in performing the service, the value of the right of way, and the roadbed. The study shows a cost per car of $17.27 based on the number of cars handled for the Brooks-Scanlon Cor- [fol. 679] poration in September, 1926. That may properly be compared with the revenue derived from these cars as testified to by Mr. Perrin as amounting to twenty dollars and some odd cents, as an approximation (Tes. p. 343).

(Thereupon defendant's Exhibit No. 25, witness White, was received in evidence.)

"Q. (By Examiner Hillyer, to Defendant's Counsel:) Mr. Davis, to make the record clear, will you give the Perrin exhibit number to hook up with this exhibit?

"Mr. Davis: In the last statement of Mr. Perrin, he said he had averaged some 800 or 900 cars, and found that the weight of the car was some 60,200 pounds. The contract provides that the car shall be paid for on basis of 50,000 pounds, with excess in proportion. Applying that excess of some 10,200 pounds, would bring the revenue derived from that car on the freight rate that they paid up to $20.47. That was at the end of Mr. Perrin's testimony, practically. That figure bears no relation to the revenue shown on Exhibit 22" (Tes. p. 344).

Cross-examination.

(By Mr. Cotterill:)

"Q. Mr. White, included within your computations you have assigned certain items as if they were cost items, under the heading of interest. Will you please indicate the accounting theory in which you are able to refer as an item of cost, such an item as you described as interest?"

"A. I am not here to testify as an accountant, as a certi-[fol. 680] fied public accountant, Mr. Cotterill. I am here to testify as to what it actually costs the railroad. Now, I cannot go into theoretical accounting propositions with you."

"Q. Would you say then, that you are not able of your own accord, to indicate any theory by which it may be thought to be or not to be a proper thing to do to set up an interest item as if it were a cost? I had the impression that you qualified yourself as having made what you thought was a cost study, and that in that sense you take responsibility for the inclusion in your figures of an item under the heading of interest."

"A. Well, interest is something which has to be paid by the railroad; therefore it is a cost to this service."

I do not think that any provision is made in the Interstate Commerce Commission classification of operating expenses for the item of interest as if it were an operating expense. The item our company paid to the Brooks-Scanlon Company by way of car hire or mileage allowance is not included by the Commission's classification under operating expenses. It is included as a cost to the railroad, but not under operation. It is a sum of money which the railroad pays by way of choice rather than to provide the equipment itself, rather than to make its own capital outlay, it prefers to pay somebody else something in the nature of rental. As to what suggested to my mind to apply the car mile formula in one instance, rather than the train mile [fol. 681] formula which I have used in other instances, it is because there might be an equal number of trains run for two companies, and yet one train might have a great many more cars in it than another. The expense to the carrier per unit of traffic would be different so far as those items of expenses are concerned (Tes. p. 346). Not only in the unit

of traffic, but in the aggregate, the wear and tear on the rails would be greater, the wear and tear on the railroad. If a given locomotive of a certain rating is used to haul today a train of 40 cars, and tomorrow a train of 50 cars, that locomotive cost is not exactly the same irrespective of the number of cars in the train, no, sir. I would not undertake to say that without knowing all the conditions. As to whether the difference in locomotive cost in the case of two trains, one with 30 or 40 cars, and the other with 50 cars, would be in the proportion that 30 or 40 or 50 would bear to 100, that would altogether depend on the conditions. One train might be delayed and another might not be delayed. The length of the train might cause the delay in some cases. That is not an accounting assumption, that is an operating assumption. I have the underlying data which is either on the exhibit or is not on the exhibit giving the respective train miles. It is not on that exhibit. The representative train miles is on the exhibit. It is in item 3, train mileage by log trains in September. Maintenance of equipment, locomotves, train mileage by log trains in September, [fol. 682] Putnam, 5,019; Brooks-Scanlon, 9,890.

"Q. Now, we observe then, by comparisons of items D and E, that the car mile ratio would be 67.6 per cent for the Brooks-Scanlon Company. What are those equations as to the train mileage, have you the computation?

"A. Well, the ratio of the Brooks-Scanlon to the total would be 70 something per cent. I haven't quite finished it. It is a somewhat higher ratio than the car mile ratio."

In respect to this matter of the switching locomotives, I have assumed six miles per hour, and in that way reached approximate switching cost average. Then our only use in this case of the statistical data is the assumption that six miles is the switching locomotive mileage per hour, yes, sir. I went to Jacksonville and discussed very carefully with our superintendent of terminals there as to the time it takes an engine to do that work, as I stated in my evidence. He told me it would take six hours to take the cars from Milldale to Eastport to do the necessary work at each point, and bring the cars back again, per train of forty or fifty cars. I think it is roughly about four miles. I cannot give you that from my own knowledge. I did not investi-

gate this myself by a time study. I have no certain knowledge as to what that distance is but I began at Milldale. From Milldale to Eastport it is my understanding that that [fol. 683] distance is approximately four miles (Tes. p. 350). As to what that locomotive does after it has discharged its functions at Eastport, I didn't go into the detail of that. I simply went into the total time used by that engine. You understand all these cars have to be weighed. After the locomotive has completed the measure of switching service as involved, and has disconnected completely and finally from those cars, I do not know what becomes of the locomotive.

"Q. Do you know whether or not that locomotive continues beyond Eastport, and if not beyond then backwards, and before reaching its starting point performs any switching service of any kind for another company?"

"A. I understand not, or if it does, it is included in its day's work, and the six hours time is the time spent in doing the work for the Brooks-Scaulon day run. A switch engine day is eight hours, and that engine might go out there and do two hours work, if there are other spurs out there, which I am not advised about" (Tes. p. 351).

I have not shown any separation as between passenger and freight service. That is done by the Interstate Commerce Commission ruling, and our accounting department. This item of $33,000,000 is freight exclusively.

I will be very glad to make a complete written statement [fol. 684] of the method of determining this cost and the allocation used and present that at the next hearing.

As to whether property taxes in the State of Florida are divided as between sections of our line, I cannot answer that question. I know nothing about taxes or the method of distribution. I did not have available the ordinary formula for the apportionment of taxes to the particular description of traffic. It may have been available but I did not avail myself of it. I do not recall that I have ever seen any railroad cost studies in which an apportionment of taxes was made. If I had included an item here for taxes I think it would not be inconsequential, from the amount of the taxes.

I will include in the statement of the explanation of the formula the bearing which taxes might have on some theoretical allocation.

To the question whether the taxes assessed by the State of Florida on the property of the Atlantic Coast Line R. R. would be just the same if we ceased to run these trains at all, except as to the equipment employed in the handling those trains, my answer would be that as long as those trains are run, they have got to bear their proportion of the expense, and taxes are one of the expenses.

"Exam. Hillyer: Mr. White, when you are making that explanation, will you note that the important figure here, estimated cost per car, $17.27, does not appear to be ascertainable from the summary? In other words, I don't know where the figure comes from.

"The Witness: Simply the total number of cars at the top divided into the $23,678.

Exam. Hillyer: And if that is what it is supposed to be, then it is incorrect, I think. I think something was added or deducted before you made the calculation, because it does not come out correctly.

The Witness: I will have that corrected if there is an error.

Exam. Hillyer: In view of the offer to make this detailed [fol. 685] explanation of the cost exhibit, I assume that further questions will be reserved until the adjourned hearing" (Tes. p. 358).

The month of September was selected for this cost study simply because it was a recent month when everybody's thought would be fresh in the minds of the operating people. September is one of the least expensive months for this operation, because during the winter time when our tourist business is on these log trains are delayed, and the wage cost runs up very much higher.

[fol. 686] The cost study could be made for a period of a year and it would not be particularly a very difficult job, but it would take some more time.

I am familiar in a general way only with the operation conditions surrounding the Wilson Cypress Company movement at Palatka. Only on the map am I familiar with that line of connection between Milldale and Eastport.

There are bridges over navigable streams but I can't say how many. I have no idea what the cost of that extension was.

I can make the analysis which has been suggested and furnish it to the Commission within the next few days.

Exam. Brown: Pursuant to agreement, this hearing will be adjourned to resume at Jacksonville, Florida, Mason Hotel, on January 5, 1927.

Mr. Cassidy: May it please the Examiners, speaking for the Jacksonville Traffic Bureau and for all of the intervenors who signed the motion to dismiss, previously entered in the record, we respectfully submit at this time that reserving all our rights to have the case disposed of on our original motion as made, that is on the evidence submitted since that motion was made, we wish to renew at this time our motion to dismiss. We propose within a reasonable time to ask permission of the Commission to argue the question of the disposal of this case on our motion to dismiss.

Exam. Brown: Mr. White, will you submit the information requested from you within 10 days, and serve a copy of that information upon all parties of record to this proceeding who are entitled to the same?

Mr. White: Yes, sir, through our attorney.

Mr. Fred Davis: Mr. Examiners, we would like to have it understood that the Railroad Commission of Florida joins [fol. 687] in the renewal of the motion to dismiss previously mentioned by Mr. Cassidy.

Jacksonville, Florida, January 18, 1927.—10 o'clock a. m.

Before R. N. Brown, Attorney, Examiner

Met pursuant to notice.

"Examiner Brown: Pursuant to adjournment from October 22, 1926, at Valdosta, Georgia, I call for further hearing this morning, Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company.

"I will call for new appearances at this time, that is, those who did not file an appearance at the Valdosta hearing. Are there any such appearances?"

(Thereupon the following appearances were filed:

H. A. Jackson, Valdosta, Ga., for Jackson Bros. Lumber Co.; Dr. C. C. Giddens, Valdosta, Ga., for Bray Lumber Co.; J. E. Davies, Climax, Ga., for himself; Frank W. Gwathmey, Washington, D. C., for Seaboard Air Line Ry., Central of Georgia Railway, Southern Railway and Georgia, Southern & Florida Railway, interveners, in lieu of Henry Thurtell, who appeared for these intervenors at the Valdosta hearing; W. E. Kay, R. C. Osborne, and Carl H. Davis, for defendant Atlatnic Coast Line; J. S. Farish, who appeared at the Valdosta hearing in behalf of the Roofer Manufacturers Club of Georgia, stated that his authorization to appear in behalf of that club had been rescinded.)

[fol. 688] Examiner Brown: Now, Mr. Perry, I understand you have further evidence to submit at this time. You may proceed.

Mr. Cotterill: The complainant in this case on the record announced that it closed its case.

(There ensued a discussion of complainant's right to introduce additional evidence.)

"Examiner Brown: I believe that every party in this hearing has had notice of the fact that further evidence on direct is to be submitted by complainant; it is not taking them by surprise; they are aware of that circumstance. In view of that fact we will proceed with this witness."

"Mr. Cotterill: May we have the record to indicate our attitude, Your Honor, on the question of surprise? It is correct to say that we were not surprised that the privilege of submitting further evidence has been accorded."

"Mr. Cotterill: We would like the record to definitely show a specific exception to the allowance of the privilege of the further testimony."

C. C. Giddens was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Perry:)

Doctor C. C. Giddens, Valdosta, Georgia. I am interested in the manufacture of log at Valdosta, Ga., into va-

rious forms of lumber, and come into direct competition [fol. 689] with Florida manufacturers of logs. The demand for logs for my mill carries me into Florida for distances up to 170 miles on the Atlantic Coast Line Railroad (Tes. p. 374). I cannot draw logs from the distance and on the railroad as just referred to at the present time on account of the rates (Tes. p. 374). The rates from these points in Florida to Valdosta, Georgia, are higher than I can afford to pay. If the rates complained of in this case, maintained by the Atlantic Coast Line Railroad between points in Florida up to 170 miles, were to be extended to Valdosta, Georgia, that would relieve this condition that prohibits me from drawing logs from Florida at this time. I had in mind one or more locations of logs that I could buy if the rates of which I complain were different. That is, if I were placed on an equal basis with Florida manufacturers (Tes. p. 375).

Cross-examination.

(By Mr. Cotterill:)

My saw mill at Valdosta has been in business fourteen years under the name of J. N. Bray & Company. It is a circular mill with a normal capacity of thirty to thirty-five thousand feet in eleven hours. We make dimension lumber and we also make dressed stock and sell it in different places. Our largest customer is the Norfolk & Western Railroad (Tes. p. 376). We ship some to the east and not any in the west. We sell some in the east, some in Georgia, some in the Carolinas, some in Ohio. The mill was there in Valdosta before I became a member of the firm. When I became member the logs were obtained for that mill right [fol. 690] around Valdosta, from three to fifteen miles. We have not cut all of our logs in the neighborhood of Valdosta yet. We are getting some stuff in there (Tes. p. 377). They are mostly cut out and what we have left is mostly small timber, some scrub growth. We don't speak of it as scrub; we speak of it as low grade.

(By Mr. Cotterill:)

"Q. Can you indicate approximately what would be a 170 miles point in Florida from Valdosta on the Atlantic Coast Line Railroad?"

(Objection stated and argued.)

"Examiner Brown: It seems to me Mr. Cotterill's cross-examination is proper; but the witness need not disclose any information which he thinks will be detrimental to his business or disclose any information to any of his competitors."

"A. There is timber that I can buy within 170 miles of Valdosta on the Atlantic Coast Line Railroad that I want to buy and expect to buy if we can get a rate."

"Q. I am asking you, Mr. Giddens, to tell us about where on the Atlantic Coast Line Railroad would 170 miles from Valdosta bring you."

"A. That is an unfair question, because he wants to attempt to show where this timber is."

If you will get a map I will show you a point 170 miles, or practically so, in Florida. But I can't indicate to you where this timber is I expect to buy; it is an unfair thing. [fol. 691] I would like to make this statement in regard to this very question that is being asked now at this hearing. At the hearing that you held in Valdosta, the same question was asked Mr. Jackson, and he and I were figuring on a tract of timber. I did not know at the time that he had been figuring on it. And I would say in just a few days after the hearing that that tract of timber was sold. I know something about it. The location of that timber was revealed by Mr. Jackson under the same circumstances as obtain here. And the lumber was bought in the next two weeks (Tes. p. 380).

As to whether I would indicate approximately where, as I understand it, 170-mile range of distance would fall, starting at Valdosta and going over the Atlantic Coast Line either through Dupont or through Thomasville. I can only say this: that we would want to use the Dupont line. I don't know where 170 miles via that route would bring me, because I don't know exactly the distances. As to whether it would bring me into Suwanee County, if I would answer that you would be within a close range of the proposition I am now figuring on; I don't think it would be fair. I can tell from memory at least approximately where 170 miles from Valdosta falls, yes, but I am not going to do it because that is the very thing I am fighting now (Tes. p.

381). Your Honor, if I answer it that way, I answer his former question where this timber is located. In other words, to answer Mr. Cotterill's question would disclose that information. I can load this timber on the Coast Line. [fol. 692] It is nearer the Coast Line than it is to some other railroad. It is saw mill timber, the same class of timber that I am getting. As to whether I am now getting what I call low grade stuff, I am getting some of both. If I give you the size of the tract it will certainly enable someone else to locate the timber. I can say this, it is average sized timber, but I would not care to answer as to the size of the tract. There is not any secrecy or mystery about timber any place in the State of Florida. As to whether or not everybody in the saw mill business in the State of Florida knows where every foot of merchantable timber in the State of Florida is located, I couldn't answer; I don't know. I would have to answer that in this way. I am buying tracts of timber here and all about in Florida that I didn't really know about. These real estate men come to me, and I go and look them up, and I buy timber that I did not really know was there.

The logs that are drawn from Georgia into Valdosta are shipped from 15 to a hundred miles. As to whether I have ever tried to ship logs 170 miles from any place, I have never bought any, I don't think, 170 miles; no, sir.

"Q. Have you ever heard of anybody doing it except at a tidewater location?"

"A. Yes, I have."

"Q. Where and when?"

"A. I think that my friends up at Macon are shipping logs 170 miles. This is hardwood logs" (Tes. p. 384).

[fol. 693] As to whether I have ever heard of pine logs moving 170 miles by railroad except at tidewater, that is a question I don't know. I think the people at Doctortown have been shipping 170 miles. I know they have shipped below my territory; I don't know the exact distance, but I know it is a long ways; a rather small part of the shipment is up to 100 miles, and most of it is still within 100 miles from Georgia and Florida. My haul will run, as I said, from fifteen to a hundred miles.

"Q. Granting that it will, most of it does not come 100 miles?"

"A. Well, I take in a lot of stuff."

"Q. Short hauls?"

"A. No, I am shipping as much as I am dragging in."

That part of our logs originating in Georgia that we ship in by railroad to Valdosta, the railroad distance is, I would say, forty to fifty miles, on an average, as near as I could come to it. As to whether I am totally inexperienced in shipping logs on an average 150 to 170 miles, I have never attempted to do that up to this time, but I am going to have to do that if I keep going; other people are doing it. You have other people in Florida shipping 170 miles or more at Jacksonville.

"Q. Now, have you ever heard in your entire experience of anybody logging by main line service to an interior saw mill from 150 to as much as 170 miles to a saw mill at the rail?"

[fol. 694] "A. I have just referred you to other people."

"Q. To people at Doctortown."

As to whether, when we did ship from Georgia origins to Valdosta as much as 100 miles, it was a satisfactory thing to do, it is a satisfactory thing to ship logs from any point where you can get a rate that is reasonable. I have never lost any money saw milling; I may do it some time. Although ours is a small mill, we find it necessary to have a pretty steady flow of logs to keep in continuous and steady operation. If the supply of logs is not regular, it causes extra costs—you have to shut down and start up again.

"Q. Now you said that you cannot ship logs from Florida to Georgia on account of the rate. What you mean then, is that the rate, in your view, is too high; is that true?—from Florida to Georgia?

"A. You mean the rate to us?

"Q. Yes, to Valdosta.

"A. Well, it is considerably higher than our competitors are enjoying in the State of Florida."

Whether that rate from Florida to Valdosta is too high is for the Interstate Commerce Commission to decide.

From the standpoint of our ability to ship from Florida to Georgia, and whether it is because the rate is high that we cannot ship, I will answer that by saying that I cannot ship those logs, competing with the other fellow who has a rate twice as low as mine.

"Q. Granting all of that, can you ship logs over 150 miles to Valdosta, originating in Florida, under the present rate from Florida to Georgia, if there were not any [fol. 695] sawmills at Jacksonville at all.

"A. That would depend entirely on market conditions."

We have to ship our logs from the point where we can get our logs the cheapest and get the cheapest rates, and when they give out we have to get them from other points, even if they cost us more, if we are to keep in business (Tes. p. 389).

If the Jacksonville mills were to burn or were completely destroyed and, therefore, if we would not have any competitors that had any better rate, we would be able, if we could obtain them, to commercially transport logs from Florida to Valdosta, Georgia, under the present freight rates from Florida to Georgia. There are other mills in Florida besides those in Jacksonville on the Atlantic Coast Line.

"Q. Well, take any mill on the Atlantic Coast Line, and assume that all of the mills on the Atlantic Coast Line Railroad in Florida were to burn or be destroyed, and, therefore, nobody were shipping under the so-called Cummer low-rate scale in Florida; would you then be in position, or at least, do you think you would be in position to purchase timber lands in the State of Florida and ship the timber by railroad to Valdosta, a distance of one hundred and fifty miles or more?

"A. If I had no competitors in Florida—if I understand your question—that was enjoying a better rate.

"Q. Enjoying the Cummer rate on the Atlantic Coast Line Railroad?

"A. Yes, sir, I believe I would, yes, sir.

"Q. Now, why do you believe you would?

"A. Because I would certainly be in position to do as well as my competitor, and if he had to draw his logs from

there and I had to draw mine from there, and we were paying the same rate, certainly I ought to be able to put it on the market at the same rate."

"Q. I see your point of view. Then your thought is that you would be able to draw logs from Florida to Georgia un- [fol. 696] der the present interstate rate from Florida to Georgia, for 170 miles, because, you say, a mill at Jacksonville is drawing 170 miles within Florida under a lower rate; is that your process of reasoning?"

No, I said it was unfair to me and that I couldn't compete with a competitor in Florida who was hauling their logs from 150 to 170 miles over the Atlantic Coast Line Railroad, selling to the same customer that I am selling to, and enjoying a rate about twice as low as the rate I am paying; if you do away with that and place him on the same basis that I am—

[fol.697] "Q. Well, he would be out of the way entirely; it would not be a question of putting him on the same basis, he just disappears; in that event would you undertake to market lumber at Valdosta made of logs brought 150 miles or more under the present interstate rates, not the Cummer scale?

"A. Well, that would depend on the conditions."

As to the proposition that either those concerns go out of business or that the rate on logs which they pay to Jacksonville is increased and made as high as the rate from Florida to Georgia, then, in fact, I would ship logs from the State of Florida to Valdosta, a distance of 150 miles. I would, yes, sir. Because one of the strongest competitors, I cannot say just one, but some of the strongest competitors that I have that are in the railroad business is from Jacksonville; I don't know whether he is here this morning or not. And they are getting their logs from the Atlantic Coast Line Railroad and selling to the same customer that I am selling and have been selling to for fourteen years (Tes. p. 393). I don't own any timber in Florida. I am not engaged in shipping logs from Florida to Georgia at all. I couldn't give you figures offhand of the cost of transporting under the present interstate rates

from Florida to Valdosta, but we have them tabulated at the office. I don't know from memory what our transportation cost would be on logs from Florida to Georgia, I could not answer the whole thing, but I can refer to the rates which we have. The rates speak for themselves. [fol. 698] I have computed what those transportation costs would be from the location I have in mind. I couldn't give you the rate offhand. Mr. Jackson, who testified in Valdosta, is my competitor. I could not remember those different rates from sections and points.

I said in my direct testimony that the freight rate from Florida to Georgia was higher than we could afford to pay, and I do not take that back. That was based on your hypothesis that I was competing with Florida mills that were enjoying a much better rate. I can afford to pay a rate as high as now prevails from Florida to Valdosta, Georgia, if my Florida competitor has no lower rate on logs in Florida. I wouldn't confine it to Jacksonville.

"Q. I want to know your intention, when you speak of your Florida competitors in the sense that you just did, were you limiting your answer to the Florida competitors on the Atlantic Coast Line Railroad?"

"A. I presume so."

"Q. You 'presume' that was your intention?"

"A. I presume they were the ones that were getting this lower rate."

"Q. At least in your own mind they were the ones that you were thinking of?"

"A. Yes, that is it."

As to the capacity of our operations, we have another mill at Broxton, Georgia. Broxtan is about 65 miles above Valdosta on the Georgia and Florida. We do not ship logs in there from Florida. That mill last year cut something over 9,000,000 feet of lumber, pine and hardwood; the kind of hardwood that we ship to this Norfolk & Western job. We ship from that point (Tes. p. 398). As to where we get our logs for that mill, I am not relieved by telling you. I buy them, in Georgia, on any line of railroad that I can get the logs on (Tes. p. 399). As a [fol. 699] matter of fact, I get them over the Georgia & Florida. That railroad is not directly or indirectly inter-

ested in the mill. I have shipped logs to that mill 125 miles—approximately so. I had one logging camp that I shipped from a hundred and twenty-five miles. This is not an isolated experience. I pay the Georgia intrastate log rates at that Broxton mill (Tes. p. 400-401). It is not so large a camp and it is not so small. It is a tract of approximately three or four million feet of stuff. It is not nearly cut. We have shut our mill down at Broxton and are dismantling it and moving on the Coast Line, because he had cut out all the available timber. This particular camp I speak of is within 48 miles of Valdosta.

As to why I would be embarrassed by responding to the question where is this tract of timber in Florida that we think we could buy, I can answer that in this way. You realize that there is some fight on between the Florida mills and the Georgia mills with regard to this rate; and it is perfectly natural for the Florida operators to buy if possible—and they will do it—the available timber that is adjacent to this place, and if they realized I thought we were going to get a rate that would enable us to handle this stuff, certainly they would go in there and pick up this stuff just as fast as they could. I guess that timber has been there for many years. I don't know just how long the fight has been on (Tes. p. 403). My embarrassment in [fol. 700] disclosing its location is the apprehension that the intervenors in this case would buy it to prevent me from using it. I would do the same thing; I certainly would.

The Norfolk & Western Railroad or any of its officials are not interested in my company (Tes. p. 404).

This Epinger & Russell tract of 190,000,000 feet which has been lately sold is not the one that I have been speaking of. I understand it has been sold. I could not tell you who bought it.

"Q. Did you assume that they had and it was with the object in view of defeating this case? Was that your reason for describing the situation as you did?

"A. Well, I don't think I would like to answer that question in that way.

"Q. You left the inference possibly you thought that some intervenor in this case had taken advantage of a pre-

vious witness and had gone out and acquired a rather extensive tract since the Valdosta hearing, and you go farther and say that you don't want to make the same mistake by disclosing the location of that lumber tract that you have in mind?"

"A. I would not like to answer that question. I don't think it is fair to me. That is a personal question.

"Q. Do you think your insinuation was fair to us?

"A. Yes, sir.

"Q. Well, have you any information at all, Mr. Giddens, that would lead you to believe that any of the intervenors in this case acquired this Epinger & Russell tract since [fol. 701] the Valdosta hearing?

"A. I don't want to answer it because there is a party that bought it, but I don't know. I have heard, but I really couldn't tell you now.

"Q. Do you mean to infer or leave the impression that anybody in this case has bought this tract?

"A. Well, I answered your question (Tes. pp. 405, 406). I have personally examined that tract.

"Q. Have you had a quotation as to price?

"A. Well, I don't think that ought to be asked. I know what they want for it. I will not disclose how much" (Tes. p. 407).

"Mr. Cotterill: Now, if your Honor please, we move to exclude the entire testimony of this witness on the point that he is not now engaged in the shipment of logs in interstate commerce, and he says he would engage in interstate commerce if he had a rate of a certain description or rate adjustment and refuses to describe the location where is located timber which he says he could acquire. His refusal to answer that question disqualifies the witness" (Tes. pp. 407, 408). (Testimony not excluded.)

(The Witness:) The mill at Doctortown is on the Ockmulgee River. I think this is navigable at the point at which the mill is operated; they operate small boats of low tonnage. I could not answer if the principal cut at that mill is hardwood. I have sold them pine myself, but I don't know how much hardwood and how much pine [fol. 702] they cut. I could not answer that. If it is

testified to that this was principally a hardwood mill I would not be prepared to deny it. I don't know. The Jacksonville mills are not obnoxious competitors. We are good friends personally. I would not like to answer who is the particular competitors. I desire not to answer the question (Tes. p. 409).

"Examiner Brown: The witness need not disclose the name of that competitor unless he wishes to.

"Mr. Adair: Will your Honor note our exception to that?

"Examiner Brown: Surely. The record will so show."

(The Witness:) The Alabama mills compete with us, I guess, and I guess they sell lumber. I can't say directly if they sell lumber in our markets. I don't keep up with the Alabama mills as to where they sell their stuff. I don't keep up altogether with the markets where they buy their stuff. I know some of the places from which they buy (Tes. p. 410). I suppose Alabama competes with the market in which we sell our lumber. Other Georgia mills likewise compete in that territory, I guess. I could not tell you positively if the South Carolina mills also compete in that territory. That is matter of business record. It shows as to where they sell their stuff, and I couldn't answer for the South Carolina mills. I suppose there is lumber in South Carolina and I suppose they sell in competition with the mills that are there. As to whether we ever encounter the South Carolina mills in connection with our Virginia [fol. 703] operations and our operations in the East, I can't tell you more than one or two of the contractors of the Norfolk & Western Railroad. The Norfolk & Western is not directly or indirectly interested in any timber owned by my company (Tes. p. 411). I did cut some hardwood at Broxton. I don't cut any at Valdosta. The 125 mile haul that I mentioned was pine, with come cypress in it; mostly pine, and no hardwood other than cypress. Our annual capacity at Valdosta you can figure as 30,000 feet. We are not cutting what would be my normal capacity. We are cutting approximately 6,000,000 feet a year there, but we are not running at a normal capacity (Tes. p. 412). We have been cutting 6,000,000 feet a year the past few years, approximately so, without referring to my daily reports or my annual reports.

Redirect examination.

"Q. (By Mr. Price:) Mr. Giddens, in answer to Mr. Cotterill's question just a moment ago you stated that if all of the mills in Florida were eliminated, and thereby eliminated this Florida rate, that you would then be in position to use the present interstate rate in securing logs from Florida. Would that be due to the fact that you would then be in position to buy these logs in Florida because you would have no competitive buyers?

"A. That is true, sir (Tes. p. 413).

[fol. 704] "Mr. Cotterill: We make the motion to exclude that testimony as to the location of the timber in its entirety by reason of his failure to answer the question as to where timber is, its kind, and its quantity; and in support of that motion we should like to have the privilege of complete argument.

"Examiner Brown: We will have this argument on the record.

"Mr. Cotterill: Other counsel will ask a ruling to strike that part of the testimony of the witness also in which he [fol. 705] refers to competition with some particular concern in Jacksonville, going to the refusal of the witness to testify as to the name of that concern."

(Thereupon argument ensued on the objection; Tes. p. 415 to 422, incl.)

"Examiner Brown: The Examiner's ruling is that the evidence will be allowed to stand. The weight to be given the testimony is of course a matter to be decided by the Interstate Commerce Commission. This ruling will apply to future witnesses which Mr. Perry may produce.

"Mr. Cotterill: Now if your Honor please, it is more than a perfunctory matter in asking that the record show an exception because, as I have indicated, we can proceed under the law, it may be possible to make an adequate defense to the case, at least it is difficult to do so; I won't say not possible—without the privilege of cross-examination of the witness on the points that have been discussed" (Tes. p. 422).

("By Mr. Price:)

"Q. Dr. Giddens, as long as the present rates on logs in Florida on the Atlantic Coast Line remain in effect, and

the present interstate rates from Florida points to Valdosta is in effect, are you prevented from going into Florida on the line of the Atlantic Coast Line Railroad and purchasing logs, shipping them to Valdosta, and manufacturing them into lumber?

"A. Yes, sir."

(Witness excused.)

[fol. 706] J. E. Davis was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Perry:)

My name is J. E. Davis; Climax, Georgia; engaged in the manufacture of lumber at Climax, Georgia. And I find it desirable to acquire logs in the State of Florida. Yes, I like to buy logs in Florida. As I say, I cannot buy logs in Florida now and ship them to Climax and manufacture them into lumber on as profitable a basis as compared with my competitor, no. I am in the lumber business at Climax, that is, the pine business—cutting some hardwood. I have an idea of extending my business, to put one mill, at least, on hardwood. I had some parties in Florida to come to me to offer to sell me hardwood timber standing, or hardwood timber loaded on cars. After investigating the rates which existed to Florida points, or here in particular as compared with my place, I find such a difference that I will have to abandon the idea or get some relief somewhere (Tes. p. 424). The location of this timber is within 170 miles of Climax in the State of Florida on the Atlantic Coast Line Railroad. If the intrastate rates are as now applied on the Atlantic Coast Line Railroad in Florida between points in Florida, and if the same scales of rates were to be extended interstate between points in Florida and points in Georgia, or to Climax, Ga., I would then be in a position to buy certain grades of logs in Florida, yes, and the reason I do not buy them now is because of the low rate in Florida as compared to the high rate between points [fol. 707] in Florida and points in Georgia; yes (Tes. p. 425).

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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1929~~ 1930

No. ~~495~~ 16

THE STATE OF FLORIDA AND A. S. WELLS, E. S. MATTHEWS, ET AL., ETC., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. ~~494~~ 17

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY, APPELLANTS,

vs.

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No. ~~495~~ 18

WILSON LUMBER COMPANY OF FLORIDA, APPELLANT,

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THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

FILED NOVEMBER 27, 1929

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No. 493

THE STATE OF FLORIDA AND A. S. WELLS, E. S. MATTHEWS, ET AL., ETC., APPELLANTS,

vs.

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No. 494

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Cross-examination.

(By Mr. Gwathmey:)

If I have an equality of rates interstate from Florida into Georgia on the one hand and intrastate in Florida, on the other, I would be glad to undertake to do business in Florida, yes, in competition with the Florida man. I should think the only difficulty would be in my ability to compete with my competitor or to undersell my competitor. If we have such an equalization of rates on the level of the present interstate rate from Florida into Georgia, we could do business in Florida yes, sir.

I did not attend the Valdosta hearing and was not there at all (Tes. p. 427).

Climax is in Georgia, Decatur County, just about ten miles east of Bainbridge. I have various kinds of mills. It don't compare with Long-Bell. I have two "ground rattlers" and a larger mill. I am obtaining logs in the mule-land country and environment of Climax on the Atlantic Coast Line. There is not as much timber there as there once was. I have not got enough to operate the mill in sight. I have not figured exactly how much more we have got ahead to cut. I would say it is a matter of more or less than five years. I don't ship logs at all by railroad and I have had absolutely no experience in that. I have talked with practical lumbermen to find out if it would be a practical thing to ship logs any great length and my impression is that it can be done with an equitable freight [fol. 708] rate and other conditions; Of course every condition has to be considered, but, taking a log loaded on a car, I figure that if the rate were the same to me as it was to any competitor, why I have an even break with him. I have made calculations as to whether I could ship profitably from Florida to Georgia. I didn't have to do it myself. The Atlantic Coast Line Railroad did it for me. This document I am going to read from is a private paper, but it does say, for instance here, that the rate under the present interstate rate from Capitola, Florida, to my place, a distance of 59 miles, is $16 for 24,000 pounds, excess in proportion. The same distance, the rate that applies here (Jacksonville) is $10.50. The Coast Line did not advise

me as to my ability to ship profitably from Florida into Georgia. This is self evident here. They didn't advise me except in their own figures here. You can make this comparison: Three cars of logs will make one car of rough lumber; that is about correct, approximately correct. Well they have a difference in—the manufactures here would have a difference in favor of them from sixty—I figure approximately from sixty to one hundred and some odd dollars a car—of sawing lumber; and at an approximate value of I figure from three to four hundred dollars of this amount—a difference in the rate alone of from sixty to one hundred and odd dollars on this given amount of lumber, that I have never been able to make as a profit in [fol. 709] the manufacture of lumber. If I could make that difference in the manufacture of lumber I would be perfectly satisfied to accept it as a profit of course (Tes. p. 431). The only information the Atlantic Coast Line gave me was the statement of the rate per car on log from Capitola and the distance in miles. I asked them for it; I forget the date; I could not say whether it was since the Valdosta hearing; I am not familiar with the Valdosta hearing. I would say it was in the last three or four months. They did not give me any other information in a letter; that is essentially the information that I asked for and what I got (Tes. p. 432). I had no subsequent communication with the Atlantic Coast Line with regard to this matter. I wrote them directly and got a reply direct. The exact date of the letter was in December, 1926. I have talked with practical lumber men. As to whether we have satisfied ourselves that even as an operating matter it is a feasible thing as a day in and day out proposition to ship logs to an interior mill for any considerable distance, I have said that I have had no experience. Practically I have; personally I have. I was at one time connected with the Case-Fowler Company at Macon; I mean I was familiar with the Case-Fowler operations, I did business for them (Tes. pp. 433, 434).

I stated that somebody had come from Florida and offered some timber on different and various occasions; that is correct. There have been such people as individual loggers; several of them. I would try to run a mill on that [fol. 710] kind of a supply; absolutely. Me or any other

man would prefer to do that. I try to specialize at the present time on roofers, car material, and some poplar. In the manufacture of roofers I use a comparatively low grade timber; that is right. As to whether it is the custom of the trade for the roofers themselves to cut the logs, well, I buy timber on contract. I buy timber produced by the mills. I don't ship anything to our mill at Climax. I bring there anything I can buy at a reasonable price to produce at a profit. It is both logs and lumber. We haul both logs and lumber. Our business is not buying low grade lumber from other people who cut the logs, no. I buy any way I can. I own the timber a general thing; most of my lumber is produced from timber that I own myself (Tes. p. 435). I do not ship lumber from my own mills; no, sir—no use. The method is to cut the timber with the smaller portable mills. It is the general practice in the manufacture of roofers for the timber to be cut either by an owner of the timber or by somebody else under contract with this small portable mill, and using the low-grade stumpage, like cut over lands and so forth, and then they either truck or sometimes possibly ship the lumber into the mill; there is where we really make our roofing, at the mill. If I were to acquire or could acquire timber lands in the State of Florida, there would be no change in that course of doing business. I would not begin for the first time shipping logs from Florida to Climax, and then begin [fol. 711] cutting the logs at Climax, and then making the roofers out of the logs; or cut the Florida timber with portable mills or buy under contract. I have a mill that is not in use, adapted to this particular purpose. My intention was to buy low-grade lumber in Florida, ship it to Climax, and utilize this particular mill on hardwood and hardwood exclusively, differently and independently from the roofer business. So far as our roofer business is concerned, you can disregard that, that would not injure us as a roofer shipper of logs at all. They don't ship logs into Georgia at all, they can't afford it. I have an idle hardwood mill which I want to put into operation if I could get a supply of logs for the purpose.

As to the difference between the rate to Climax from an origin point in Florida, on the one hand, and what is the rate within Florida on the Atlantic Coast Line for the

same number of miles haul, there is a difference of three cents per hundred pounds on logs, under the two rates, for the same number of miles, that means in terms of carload of lumber thirty cents a thousand there, approximately. Let's see if I am correct there with my figures. As to whether I was mistaken previously, the rates as they stand are self-evident; it is not necessary for either of us to figure it out, because it is published as it stands. I did not say that the difference in the Florida log rate and the interstate rate from Florida to Georgia would amount to as much as one hundred and sixty dollars a car on logs. I said approximately from sixty dollars to one hundred [fol. 712] and odd dollars. That would apply either to a car of finished or rough sawn lumber. That is the difference on the car of lumber resulting from the difference in the two log rates. I have figured as to whether I would be able to open this mill at Climax, start it in operation again and start it on logs if the Florida railroad rates, under the conditions as they now exist, were increased to as high as our own rate from Florida to Georgia; and I could do business on that, under hardwood—which is the only thing I figure on, on logs. I don't know anybody in Jacksonville shipping under a lower rate.

"Q. Well, I will ask you this: If none of your competitors are shipping hardwood under the Florida log rates, what difference would it make to you what those Florida log rates are, if you want to go into the hardwood business?"

"A. I see logs being shipped in here. It is reasonable to presume that they are shipped back here. It is notice to know what the rate is or for you to investigate it."

"Q. Mr. Davis, you have not examined particularly, have you, the question of whether any lumber manufacturer in Jacksonville is shipping logs to Jacksonville and manufacturing lumber that would compete with you in a common market, have you, on hardwood logs?"

"A. I am satisfied in my attitude, yes sir, I am convinced."

"Q. Can you say that you have come to such conclusion [fol. 713] after making investigation as to the hardwood situation, manufacturing everything out of those logs there?"

"A. I would say my information is correct. Yes; I have a reason for it."

"Q. Well, can you give the character of the information, without giving us the source of it? What is it, somebody talking to you on the street, or have you made an engineering investigation of the subject?"

"A. Well, I don't think it is necessary—I hope it is not necessary for me to discuss that."

"Q. Well, we understand you prefer, we assume under the ruling of the Examiner, not to disclose the information as a result of your allegation, tested in your own mind, that somebody in Jacksonville would attempt to ship logs to your disadvantage; that is about what you understand?"

"Exam. Brown: Please do not misconstrue my ruling to mean that the Commission would not consider such information pertinent or desirable. I am leaving that with the witness whether or not he will answer a question of that kind."

"Q. You would prefer not to discuss any information that you have or the source of it?"

"A. I can't discuss it."

The capacity of the mill I am now operating at Climax is about 20,000 feet a day. From the information I have on it the Florida timber that has been offered to me is between five and six million feet (Tes. p. 441). That wouldn't last me a year. I wouldn't undertake to engage in the establishment of a hardwood lumber business with a source of supply that would only be good for one year.

[fol. 714] We sell our manufactured product mostly north of the Ohio River and east of Chicago. Virginia gateways and north as a general thing. I think I would come into competition with every producer in the southeast or any place else. I concluded that I could do business under the present interstate rate. Well, I would like to enjoy the rate that Jacksonville has and other points for a while; for curiosity; yes. I am satisfied it would be profitable and a pleasure to do business under it (Tes. pp. [fol. 715] 442-443). It is my intention to embark on this business if the Jacksonville rate were raised. I intended to have been in the business before now. As to whether I

intend to embark upon it whether or not the Jacksonville rate is raised, I didn't consider that in the beginning; I did investigate it later, and I would be afraid to venture to do business under those conditions. I am interested in the relative carload cost of transporting the timber from the sources of supply to my mill provided that puts me on an equitable basis with the other producers (Tes. p. 443).

In my own way of reckoning the rates as laid down I figure that would be approximately a difference of sixty to one hundred and odd dollars in favor of the producers' rates that we have here, that is, to transport this hardwood timber under the present interstate rates from Georgia into Florida. I am talking about the sawn rough lumber. It would cost approximately $34 an average car to haul a carload of logs from Capitola to Climax under the present rate (Tes. p. 444). Of course no man knows; each car weighs different. We have got an average weight of ten or more pounds in the log size. I don't sell any lumber myself except f. o. b. my place. As to the location of this particular four or five million or six million feet that I spoke of, I would not disclose its location but for various sections.

[fol. 716] Redirect examination.

(By Mr. Perry:)

The reason for my refusal to answer the question as to the location of the timber is on account of the risk that I would encounter in my business.

The information I received from the Atlantic Coast Line Railroad was given in reply to a letter from me. I desired to know a given rate between given points and they wrote and told me what it was.

("By Mr. Price:)

"Q. Mr. Davies, in answer to Mr. Cotterill's and Mr. Adair's question as to the difference in amount on a car of finished lumber or rough lumber at Climax, as compared with some Florida manufacturing points, your difference is predicated on it taking three cars of logs to produce one car of lumber?"

"A. Yes."

"Q. Is that correct?"

"A. (Nods affirmatively.)

"Q. Then if Jacksonville or Perry or some other manufacturing point in Florida has a rate of ten dollars per car on logs for fifty thousand pounds, and it took three cars to produce a car of lumber, their logging transportation cost would be thirty dollars; is that correct?

"A. (Nods affirmatively.

"Q. That is just a matter of calculation. Then if the rate into Climax was thirty dollars a car, it would take the same amount of logs to produce a car of lumber at Climax as at some Florida manufacturing point, and your logging cost would be ninety dollars?"

"A. Correct."

"Q. The difference, of course, would be sixty dollars per car?"

"A. That is correct."

"Q. In favor of the Florida manufacturing points. Now, when you contemplated opening your mill at Climax, you got quotations on these Florida logs that you desired to use at Climax; you were acquainted with the rates in Flor- [fol. 717] ida, but you didn't know what the rates were from Florida to Georgia——"

"Mr. Cotterill: If your Honor please, ordinarily the objection to a question as leading is not pressed, because ordinarily, in rate statements no harm is done by it. We have here a rather critical situation. The witness has stated his point of view. Now, my lovable friend is endeavoring to argue it as he goes along and to make him say something else in addition. Under this particular circumstance I must ask that he comply with some reasonable requirement not to lead the witness. In the ordinary rate case it makes no difference."

"Exam. Brown: It is understood of course, you must not lead the witness."

"Mr. Price: Well, I am not a lawyer myself."

"Exam. Brown: Please read the last question, Mr. Reporter."

(The last question was read so far as propounded.)

"Q. Mr. Davies, you were familiar with this intrastate rate in Florida?"

"A. I made myself familiar with it, yes."

"Q. You did not know what the rate was from these Florida points to Climax?"

"A. I got that in a process of determining whether I could or not."

"Q. You didn't know what these rates were, and, therefore, you asked the Atlantic Coast Line to quote you?"

"A. Certainly."

"Q. And that is really the contents of this letter that you spoke of this morning?"

"A. Yes, sir."

"Q. Is that true?"

"A. Yes, sir."

[fol. 718] "Q. Now, from your investigation, as long as the present intrastate rates remain in force in Florida and the present interstate rates remain in force from Florida to Georgia, you will be prevented from drawing any of these logs from Florida into Georgia?"

Mr. Cotterill: Your Honor, we object; he says "you will be prevented."

"Q. Well, will you be prevented?"

"A. I consider it so; I wouldn't attempt it."

("By Mr. Perry:)

"Q. Did I understand you to say a while ago that the difference in the Florida rate, as compared with the interstate rate Florida to Georgia, results in as much profit as you care to make in the operation of your saw mill business?"

"A. I said I would be satisfied with the profit in the difference of those rates."

Recross-examination.

(By Mr. Cotterill:)

Mine is a circular mill, not a band mill. I did not say that the inbound cost of logs, transportation from Capitola to Climax would be ten dollars per car of twenty-four thousand pounds. If the Florida or Cummer scale rate existed to my place, I think it would be $10.50, as against $34 (Tes. p. 450). The $10.50 per car rate I understand

will apply to a car of approximately 50,000 pounds. Under the present interstate rate it is approximately 30,000 pounds. I would market my hardwood, if I make it at Climax, to the first man that would give me a satisfactory reply regardless of where he was. I know something about the hardwood lumber business. We haven't any market of any consequence except in the territory that I described a short while ago. I do not know what my lumber rate is from Climax to that territory. It is not necessary for me to know; I sell it on the cars at my mill (Tes. p. 451).
[fol. 719] As to whether I know what would be the lumber rate if that timber in Florida were to be cut and the lumber made in Florida instead of Georgia, that is out of the question with me; I am in Georgia. What the lumber rate would [fol. 720] be I haven't asked, I have not determined what it would be. If a difference in the lumber rate, Climax, as compared with what the lumber rate would be from the place where the timber is, was not more than two cents per 100 pounds on lumber, I would not consider operating a mill at Climax and pay ten dollars a car on logs.

H. A. JACKSON was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination.

(By Mr. Perry:)

I am engaged in the manufacture of lumber at Valdosta, Ga., and I buy logs and ship them into Valdosta to be manand manufacture them into lumber, nor in competition with in Valdosta eventually will be of the nature to procure logs in Florida (Tes. p. 453). I am in competition with the manufacturers of lumber in Florida. I cannot buy logs in Florida now and ship them to Valdosta and manufacture them into lumber in competition with manufacturers in Florida. That is due to an advantage in freight rates that our competitors in Florida have over us. There is timber available, logs, within a hundred and seventy miles of Valdosta on the Atlantic Coast Line Railroad in Florida that I could procure if I had an equal show as to the freight

rates, interstate Florida to Georgia, as compared with the rates in Florida. As long as the rates referred to as the Florida rates remain in effect it is not possible for me to [fol. 721] procure logs in Florida and ship them to my mill and manufacture them into lumber, not in competition with the lower rate to the Florida manufacturer. The only way I can do it is to absorb the difference. The difference in rate interstate Florida to Georgia compared with the Florida rates certainly is of sufficient consequence in dollars and cents to make it an item of importance.

Cross-examination.

(By Mr. Cotterill:)

The name of my mill is Jackson Brothers Lumber Company. It is a band mill and flooring mill. The capacity is about 40,000 feet per day (Tes. p. 455). Besides flooring we make roofers, a finished product altogether. We are shipping logs to that mill at this time. We ship in from almost every direction, except west on the Coast Line. We ship in on the Coast Line east; and the Southern both north and south; and the G. & F. both north and south, and have shipped over the Coast Line from the west, but we are not right now. The greatest distance right now that I ship logs into my mill is about 40 miles. We have shipped more than a hundred miles; some special movement. Well, just the timber we got up on the Altamaha river, but we are not buying up there now (Tes. p. 456). I started in the lumber business in 1890 and have operated other than in Valdosta, in Alabama, Florida, and in north Georgia, and at Ray City up above Valdosta. I am not shipping any logs now from [fol. 722] Florida to Georgia. We really have not tried, are not trying to get timber because we couldn't afford to ship it in. I will correct that in just a minute. We have shipped some logs from Jennings, just across the line on the Southern. The saw mill is generally located where the timber is. That is the reason we located in Valdosta at this time, no big tracts of timber, but timber in that direction and we had seven tracts out of Valdosta (Tes. p. 457). As to whether in my judgment it would normally be a profitable thing to locate a mill a hundred or a hundred and fifty miles away from the source of your timber, of course

that would depend on the rate of freight you could get on it. There is an outside limit that I can pay, certainly. I know something about the log rates within Florida; I know some of the timber in Florida that I might be able to acquire. It is on the Atlantic Coast Line (Tes. p. 458). I have made no computation what would be the rate to Valdosta from that patch of timber that I had in mind in Florida if there were to be established from that timber tract to Valdosta a log rate in line with the Florida rates. I have not made a computation of that rate but I can give it to you from the record. It would be, I will say, from ten to twelve dollars a car of 50,000 pounds. My finished lumber goes east mostly, to Washington, Baltimore, Philadelphia and New York, and all up in that country—the better grade especially. I sell f. o. b. our mill. We sell delivered also, mainly f.o.b. mill. I do not know whether the mills [fol. 723] in Florida sell lumber in the East at a lower price than the Alabama mills do or than the Pacific Coast mills do (Tes. p. 460). I don't know who makes our market in the East. Taking the whole community, it takes the whole manufacturing district to make the market so far as I know. If we got rid of these Florida producers entirely, say they burned the mills or closed up business, there would be a change in the market conditions in the East, I think, because there would be that much less stuff offered on the market. I think it would affect it to some extent. The Alabama mills ship to the east, I suppose. As to whether I compete with them I have no definite knowledge. I don't know. I don't know as a matter of definite knowledge that the Florida mills do.

There is no question buf what we might acquire some timber in Florida. As to whether ordinarily when a man buys a timber tract of any commercial quantity, he wants to have his mill as near to it as he can, I don't know about that. Of course if a man had a tract big enough to justify the establishment of a mill, that would be the logical thing to do. If he had to build a mill at all the logical place to do it would be to put it where the timber was. I can tell you if I had money enough to buy the tract I wouldn't buy the mill (Tes. p. 461).

I have not figured at all on the difference in the lumber rates from Valdosta to the East and from that place in

Florida where the tract of timber is. It would be insignificant, though, as compared to the log. As to whether in [fol. 724] a given case where my outbound lumber rate to the east is only a cent or two lower than would be the outbound lumber rate from the very place where this patch of timber is, and whether I could possibly pay as much as even ten dollars per car on logs into Valdosta and live as a lumberman at all, well, it is worth considerable to have your business all together and not having to be building mills around for different tracts. The fact of the business, up our way, it has come to the point where you have got to put out just little bit of mills and go to the different little tracts, or build a mill in a central location and ship the logs. As to whether I know of anybody that has built a mill at a central location and tried to ship the logs from long range distances, yes, but I don't recall the pine mill in Georgia right now, but hardwood mills are doing that, but that would be a pure experiment as to pine. As I said, we have shipped from a hundred miles. It is my observation that a man located at tidewater having ocean freight rates outbound, on his finished product, can possibly afford to engage in long haul transportation of logs—if his regular rate is low enough (Tes. pp. 463-464).

[fol. 725] I think it would be practical to operate a mill to be located inland and to depend for its source of supply of logs on a rail haul of sixty or seventy-five miles, with a reasonable rate.

I certainly do think [redacted]his interstate rate from Florida to Valdosta as being higher than it ought to be.

"Q. Mr. Jackson, even if the rate in Florida were pulled out entirely and you put those other lumber companies out of business as a result of it, would you be able to ship logs from Florida to Georgia on that present rate from Florida to Georgia—would you try to do it now?"

"A. Well, give us as long a club as the other fellow and we would be at it.

"—. Well, the other fellow at Jacksonville, he is out of it entirely, you have put him out of business."

"A. No, there would be somebody else, though."

If those fellows are put out completely at Jacksonville and we are left with the present rate from Florida to

Georgia, we would be relieved of their competition in the market. As to whether under those conditions I would attempt to acquire logs in Florida and ship them to Valdosta, Georgia, I don't know that I would in Florida because at Valdosta we are within twenty miles of Florida; we can get all the timber we can use in fifty or sixty miles of Valdosta.

[fol. 726] There is timber all along the northern boundary of Florida, long leaf pine timber, commercial timber, good for anything that yellow pine is good for. Of course they have got out in the western part of Florida, they have got a lot of short-leaf out there. There is timber in commercial workable quantities comparatively near the Georgia line in Florida. It is not there in quantities to build a finishing mill, but it is there to ship in to a mill in a central location. We ship logs and we are shipping it out of Georgia. I began figuring on the possibility of using timber in Florida before we built the mill. We didn't go into that as thoroughly as we should, probably, and we didn't investigate this high interstate rate. If I had to do it over again I don't think I would have located my mill in Florida. I don't know of a point in Florida that is not already supplied with a mill and has the advantages that Valdosta has. I was talking about the different lines of railroad running out in every direction from Valdosta. That is an advantage. It covers that much more territory for logging; we get logs in over all those different lines (Tes. pp. 467-468). Eventually we may be required to try to turn to Florida for logs, but we haven't reached that point yet, however. If this freight rate were to be changed in the way the Georgia Public Service Commission has suggested I certainly would start buying logs right away in Florida, because we would have a rate we could operate on. We have [fol. 727] got logs enough to run on now, but we have not any big supply of timber. We are buying logs delivered, anywhere, from anybody that will sell logs (Tes. p. 468-469). Most of the desirable timber has been cut out of south Georgia. We have comparatively small mills there and are up against the problem of what we will do for logs and we are not shipping logs from Florida. If we had a rate equality we might produce them, certainly if we could get a rate to come into Valdosta—in other words, obliter-

ate the State line. The rate is all that is in the way. There is nothing else involved in that problem except the rate (Tes. p. 469). As to whether I could pay twelve dollars a car on your logs from Florida to Valdosta, with an outbound advantage of only two cents a hundred pounds on lumber, and compete with a nearer mill in Florida who does not transport logs at all, he would evidently have that advantage of us, but we could absorb that. If he has got an interior mill in Florida, he has got a higher rate to the eastern market, by one or two cents on lumber. Three cents on logs means ten cents on lumber, that is, I would have to have a rate which is on finished lumber equal to ten cents, before I could afford to pay three cents on logs, if you are figuring on somebody that don't have to haul logs at all, an interior mill located in the timber. I could compete with him and pay twelve dollars a car on logs, yes sir, we could absorb that. Twelve dollars on logs is the equivalent of forty dollars on lumber, and we would [fol. 728] have an advantage in rate, which brings it down to thirty or thirty-five dollars a car, and I think I could absorb that and stay in business at Valdosta. I have not attempted to operate a mill at any time, when all of my logs have had to come in by railroad for hauls of at least fifty miles, and from fifty miles up to one hundred, not that far. We have on a haul of thirty miles. I have never experimented with the effort to ship all my logs inbound by railroad and for hauls ranging from fifty to one hundred miles; it would be feasible to do that with a reasonable rate, yes. As to whether I could run a saw mill if I had to draw logs by railroad for distances of that kind day in and day out, well, it has been done in hardwood right along. Well, if it can be done in hardwood it can be done in pine. We have not found that there is a great difference in value.

This possible source of timber that I speak of in Florida would be made up of small tracts, I would say, scattered tracts. I don't know of any large tracts; the fact of the business, we have not spent any money looking around down there (Tes. p. 472). I have not had a scientific definite cruise made to see what timber would be available. I have never personally myself investigated the real conditions. My brother is the timber man and he is unfortunately sick and cannot be here today. As to whether or not it was

found to be feasible to attempt to acquire any timber lands [fol. 729] in Florida in view of the actual ownership, to run a saw mill as I want to run a saw mill—I have satisfied my mind about it and that it can be done; yes, sir.

The roofer end of our business does involve the shipments of logs. They go into logs just the same, that is, just the top logs, that is just the knotty logs, we ship in like the other (Tes. p. 473). We ship the whole thing in the roofer business; that is, we do not bring in the roofer material and dress it when we get it.

Now from my own definite personal knowledge, I have not been in a flooring mill and do not know whether there are any manufacturers of flooring in Florida. As to whether there is any manufacturer of flooring in Florida with whom I would have to compete, well, we meet up with Florida competition. Yes, they make—well, as I said, I haven't been in a mill, as you would want just a definite statement as to who or when. Yes, I do know of my own knowledge that there are manufacturers of flooring in Florida on the Atlantic Coast Line Railroad shipping logs to his mill under the Atlantic Coast Line freight rates in Florida. One is Wilson, Otwell & Kohn at Jacksonville. That is one plant I have been in. I didn't think of that a while ago (Tes. p. 475). I don't know whether that concern gets any logs to Jacksonville over the Atlantic Coast Line Railroad. In the matter of whether I could ship from Florida to Georgia or not, besides the freight rate the cost of the stumpage enters into it. We get up against that reason. [fol. 730] The cost of the stumpage would be the same as any we have investigated; it is about the same as it is in Georgia.

The source of my information from which I conclude that it might be possible to obtain some timber lands in Florida. I got it from my brother. He had been down there in some sections; yes, sir. He is not a cruiser, no. He is a good judge of timber, however. He was just scouting, I think.

"Q. Did you fear that that particular patch of timber would be purchased—gobbled up—by these Florida companies if you were to indicate where it is?"

"A. Well, I am not going to risk it."

I knew before I came into the hearing that I might be asked the question as to where the timber was that I was speaking of.

"Q. Did anybody tell you that you should not answer the question?"

"A. Well, I got that from the experience my brother had before."

I don't know who acquired that Epinger & Russell tract, but the agent of the man who sold it told me who got it, but I have forgotten. As to whether we just assumed that the parties to this case went out and bought 190 million feet of timber only because my brother disclosed that there was such a tract in Florida and that they never knew of that tract before, I don't know. We found it out. There wasn't any secrecy about it. As to what is the prevailing [fol. 731] price of stumpage in Georgia, that is like 'Haynes' Pickles, that is 57 varieties. (Tes. p. 478).

Redirect examination.

(By Mr. Perry:)

If a similar manufacturer in Florida ships to the same market that I ship to, I am of necessity in competition with that manufacturer. It is true, then, that if he has an advantage in freight rates, he makes that much more profit on a given bill than I make" (Tes. p. 479). Therefore it is true that if I compete with such a manufacturer, I would have to absorb this advantage that he has in freight rates. In reference to the question of absorption of $10 per car, referred to in cross-examination, I have an advantage by operating a band mill over a competitor who operates a circular mill. There is an economic saving in a band mill as compared with a circular mill that would amount to more than $10 per car. I operate a band mill (Tes. p. 480).

"Mr. Perry: Your Honor, that is all we have except rebuttal testimony we will offer at the proper time."

J. L. White was thereupon recalled as a witness and, having been previously sworn, testified as follows (Tes. p. 481):

Cross-examination resumed.

(By Mr. Cotterill:)

Since the Valdosta hearing I have visited the terminals at Eastport. I did not go there with the object of checking and did not check the six hours' time as a factor in the cost study. I made no inquiries at all. I went out there to familiarize myself with the location. I had never been out to Eastport before. I had gotten my information as to the six-hour period from some one else. That is correct (Tes. p. 482). I did not have the opportunity to familiarize my- [fol. 732] self with the facts, because I did not go out there with a log train. I simply examined the tracks at Eastport. I will see if I can give you the information of the way in which I asked for the allowance which totalled six hours. Well, I don't see a letter here, Mr. Cotterill. It is possible I asked our superintendent of terminals here about it verbally; I don't recall. I asked him to let me know the time used by switch engines in handling the logs from Carbur and Perry. When I was out at Eastport I did not find any facts suggested to my mind I had allowed too much, but I made no particular examination (Tes. p. 483). I think that the switch locomotive performs other terminal services at Eastport than the switching of logs. I understand that the time that was given to me was the time that was used by that locomotive only in switching logs. It was exclusive of time used for other purposes. I reached that understanding from a talk with the superintendent of terminals here in Jacksonville. He has made a personal inspection himself many times (Tes. p. 484).

Included in the cost study there was not any item or allowance for solicitation and no items for delays other than by its proportional 27 per cent of all the expenses, total expenses under item I. Let we make sure of that (perusing papers). No, I am wrong about that; they are not included. I did not include any item of direct expense for solicitation.

"Q. Any item of direct expense encountered on your test movements owing to delays, it is understood that you took

[fol. 733] the train performance of certain test cars?" (Tes. p. 485).

"A. No, not certain test cars; all cars moved during September."

Included with that were extra expenses encountered irrespective of delays, by logs or any other reason, and I charged all of it to the cost of logs, necessarily (Tes. p. 486).

"Mr. Cotterill: We wish this record to show that we believe the motion to dismiss at the time it was filed was justified. We believe that the motion is as good now as it was then. We are going to go ahead and put in evidence in chief, without waiving our motion or any rights that we have previously acquired thereunder" (Tes. p. 487).

"Mr. Adair: Our understanding is any testimony we take is without prejudice to that motion. We so announce" (Tes. p. 488).

Arthur G. Cummer was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Mitchell:)

[fol. 734] My name is Arthur G. Cummer. Manufacturer of pine and cypress lumber; representing the Cummer Lumber Company and the Cummer Cypress Company. I am president of both companies. The Cummer Lumber Company purchased timber lands in Baker, Alachua and Levy Counties, Florida, in 1889, and commenced the manufacture of this timber in 1897. The Cummer Cypress Company commenced the manufacture of cypress in 1911 (Tes. p. 488).

My grandfather and father had owned and operated saw mill plants in Michigan since 1870. Our companies have been operating plants in Cadillac, Michigan, since 1875, and manufacture there white pine, hemlock and hardwoods. As a matter of fact, our company, Cummer Diggins Company, are still operating a plant at Cadillac. I had experience in lumber manufacture in Michigan, and in 1895 and

early 1896 I spent twelve months in Norfolk, Virginia, where my father and associates owned and operated a saw mill plant manufacturing short leaf pine, which was handled to the mill by railroad from the company's timber holdings in North Carolina. Since 1896 I have been engaged in the manufacture of lumber in Florida. We located the manufacturing plant of the Cummer Lumber Company when we started operations in 1896 on the St. Johns River about six miles north of Jacksonville, Florida, on tidewater. A number of important items entered into the location of this plant, and the most careful consideration was given to this matter. Our experience in the manufacture of short [fol. 735] leaf pine in Norfolk, together with the experience of other manufacturers in that district, had demonstrated to us the necessity of shipping our product by vessel to the northern, eastern and export markets. We appreciated, moreover, that in the manufacture of our Florida long leaf pine it was necessary to locate our plant on tidewater in order to compete with mills in South Carolina and Georgia whose plants were so located as to permit the handling of logs into the mills by water, and/or to ship the product by vessel to the different markets.

The past history of the lumber industry will show that saw mills are located on rivers wherever possible, and this is especially true in the southeastern part of the United States; for instance, Norfolk and Portsmouth, Charleston, Georgetown, Wilmington, Savannah, Darien, Brunswick, St. Marys River, Jacksonville and St. Johns River, all of these places and the waterways on which they are located have for many years been important lumber manufacturing centers. Before locating on tidewater my father and I investigated these matters personally. We visited every plant of any size in Georgia and South Carolina, and carefully studied their facilities, and so forth. We found that, as a rule, the yellow pine timber in Georgia was of better size and quality and of a heavier yield per acre than our Florida holdings. We realized, moreover, that Georgia [fol. 736] had a great advantage over Florida from a geographical standpoint, due to the fact that it had many large rivers running into the Atlantic and extending generally east and west. The Savannah, Ogeechee, Camouchee, Pendleton, Altamaha, Oconee, Little Ocmulgee, Ocmulgee,

Satilla, Little Satilla, and St. Marys rivers were natural waterways and were used in getting logs from the forests to the saw mills located generally near the coast. It was our judgment in 1896 that it was necessary to locate our plant near tidewater in order to compete with these plants which, in addition to the great advantage of water transportation for their logs, had an additional advantage in ocean freight rates over Florida ports.

Yes, we investigated Fernandina very carefully. It had many advantages over Jacksonville, a fine harbor near the ocean, but we could not secure a site for our saw mill, and so selected Jacksonville. At that time all of our timber was west of Jacksonville and there was not a river extending from the Atlantic Ocean to the timber owned by our company. It was therefore necessary to handle our logs to our mill by railroad, but this was not a serious matter to us, for the reason that we had handled logs in Michigan in this manner, had operated our Norfolk plant for years on logs handled over the S. A. L. Railway from North Carolina points, and that prior to 1896, and in fact, after that time, there was a large saw mill in Jacksonville, The Bucky Company, which operated on logs coming from Bradford [fol. 737] County, over the F. C. & P. Railroad. We first got our logs over the F. C. & P. Railroad from a point a few miles west of Baldwin. We had a contract with this railroad to handle our logs in train lots of 20 cars minimum. Our Jacksonville mills were burned in 1899, and when we went to the F. C. & P. Railroad to tell them of our plan to rebuild, we were advised that the log rates would no longer hold. We immediately commenced the construction of the J. & S. W. Railroad, which ran from our plant in Jacksonville through our timber holdings in Duval, Baker, Bradford and Alachua Counties, to a short distance west of Newberry, Florida, a distance of some ninety miles. We completed this railroad in 1899 and commenced to operate our new saw mill in 1899. We owned and operated the J. & S. W. Railroad from 1899 to 1904. It was a profitable operation. The J. & S. W. Railroad charged our company a rate on logs (Tes. p. 492). We finally sold the J. & S. W. Railroad in 1903 to Mr. Charles W. Chase, of Gainesville, Florida, who was intimately associated with Mr. Walters and other Coast Line officials in the affairs of the Dutton

Phosphate Company. We sold the railroad because we are not railroad people and wished to confine our attention to our lumber interests. Mr. Chase offered us a fair price for the J. & S. W. Railroad and we were able to make arrangements with him by which our log rates were adequately protected. When I say our rates were protected I mean, sold to Mr. Chase on terms; a certain amount in cash, and the remainder in interest-bearing freight certificates redeemable [fol. 738] as payment of freight on logs in train lots at prices per car as stipulated in our contract for sales. As to how these contract log rates compared with those previously charged by the J. & S. W. R. R., they were 33 1/3 per cent higher, or using Baker County as a basis, the new rates were $8 per car, as against $6 per car (Tes. p. 493). I have a copy of our contract of sale with Mr. C. W. Chase of Gainesville, Florida, who represented the Coast Line in the matter.

(Thereupon three photostatic copies and two typewritten instruments were marked for identification Intervenor's Exhibits Nos. 26 to 30 inclusive.)

The rate I have mentioned is not the so-called Cummer scale. The present so-called Cummer scale is a much higher rate than set forth in our contract with Mr. Chase (Tes. p. 494). Mr. Chase operated the J. & S. W. Railway for about a year, retaining the old organization, and then transferred it to the Atlantic Coast Line Railroad.

As to how we operated under the Chase contract: Soon after the first of each month we were rendered a bill for the previous month log freight. We paid part cash and the balance in freight certificates. This method continued until 1909, when the Atlantic Coast Line wished to retire these obligations in order to perfect some new financing. We then permitted them to pay off all outstanding freight certificates held by our company.

These logs were handled by the J. S. & W. Railroad and later by the Atlantic Coast Line as follows: Sufficient cars were supplied so we could have enough equipment to operate the mills, a train of thirty cars would be loaded today in our woods and would be handled to our mills tonight; [fol. 739] it would be unloaded on our log trestle into our log boom tomorrow and the empty equipment sent back to

the woods tomorrow night. Our logging engines in the woods delivered the loaded log cars to the main line and handled the empties; the J. & S. W. Railroad or Coast Line Railroad did no switching, but merely furnished the motive power to handle the trains to and from the saw mill. The Cummer Lumber Company took care of all ordinary wear and tear of log cars and their equipment, and, as can be understood, gave prompt dispatch in the loading and unloading of the log trains. This train service was a regular and constant one, remarkably so. I have figures showing the number of cars handled each month from 1899 to 1916. These show a very uniform movement of log cars over the entire period. I have had these figures compiled in the form of an exhibit showing the movement of logs and freight paid in the operation of the Cummer Lumber Company mill at Milldale from September, 1899, to June, 1916, when the Cummer Lumber Company operation ceased. There is also attached to this exhibit a statement of the Cummer Lumber Company investment at Milldale (Exhibit No. 29). After the logs are manufactured, the heavier timber and plank was shipped either in our steamers or barges to our customers in the east, or by chartered schooners to the West Indies, Cuba, and other parts. We also shipped a considerable quantity by Clyde and Merchants & Miners steamers. Our dressed or finished lumber, prin-
[fol. 740] cipally boards, were either shipped by vessel or by rail, depending upon the location of the yards of the purchaser (Tes. p. 496). Our methods were practically the same as those of our competitors who were located on rivers, and so forth, in the Carolinas and Georgia, although they still had a decided advantage over us in the costs of getting logs to their mills. In short, handling logs by railroad is not as economical as handling logs by water, and this holds good all the more when the quality of the timber, yield per acre, and so forth, are in favor of the plant handling its logs by water.

Our investment in the Jacksonville plant is $1,250,721.11, and in the Lacooche plant $1,195,534.58. At Jacksonville we own very few homes for our employees, the plant being located near the city, we have encouraged our men to build and own their own homes. We employ 617 men in our Lacoochee saw mills, exclusive of our logging operations,

and 193 men in our Jacksonville box factory. We are still operating the Jacksonville plant, namely, the box or crate factory. The sawmill is leased to the Putnam Lumber Company, which company receives its logs by train from Dixie County in the same manner as logs were formerly delivered to the Cummer Lumber Company. These two mill operations for the period from 1899 to date constitute a continuous service over the Newberry division of the A. C. L. of log trains for a period of twenty-seven years (Tes. p. 497). I have reason to believe that the traffic agreement [fol. 741] as established in our contract with Mr. Chase, and afterwards adopted by the A. C. L. Railroad, was advantageous to the A. C. L. Railroad. In 1909 when the A. C. L. Railroad took up the freight certificates, Mr. Walters informed me by letter that this agreement was advantageous to the A. C. L. Railroad. I have a copy of this letter, Mr. Examiner. It is marked Exhibit No. 27.

We discontinued manufacturing and selling pine lumber at Jacksonville in 1916. Mr. Jackson has testified he operates a pine saw mill in Valdosta, Georgia, and that the Cummer Lumber Company is a competitor in the manufacture and sale of pine flooring. That is not a fact for the reason neither the Cummer Lumber Company or any other plant of the Cummer Lumber companies, have manufactured or sold pine flooring since 1916 (Tes. p. 498).

The Cummer Cypress Company is operating at the present time a saw mill plant at Lacoochee, Florida. The plant cuts about twenty million feet of lumber a year, and is located adjacent to one tract of timber containing about 268,000,000 feet of timber, which is brought in to the mill over its own logging railroad, and owns three other tracts of timber from which the timber is now, or will in the future, unless conditions change, be brought to the mill over the Atlantic Coast Line Railroad. One tract is located near Otter creek, contains about 23 million feet of timber, which is now being logged and shipped over the Atlantic Coast Line Railroad from Otter creek to Lacoochee. One tract is located near Homasassa, contains about 29,298,000 feet of timber, which it is the intention of the company to log [fol. 742] and ship over the Atlantic Coast Line Railroad from Homosassa to Lacoochee as soon as the logging operation at Otter creek is finished. There is another tract

on the Withlacoochee river containing about 74,860,000 feet of timber, which the company has intended to log and ship over the Atlantic Coast Line Railroad from a point near Inverness to Lacoochee. I have had prepared a statement showing the uncut timber, which will have to be transported by rail carriers to Lacoochee, the investment in the plant at Lacoochee, the number of employees, the average weekly payroll, and the number of houses owned by the company and occupied by employees and their families at Lacoochee (Exhibit No. 30). We have a contract with the A. C. L. Railroad for the transportation of logs from Otter Creek to Lacoochee. We are receiving about thirty cars every day by log train from Otter Creek over the Coast Line Railroad a distance of between 70 and 80 miles. I have here a copy of that contract, Exhibit No. 28. This log train service furnished our company is substantially of the same nature and under the same conditions as that furnished the Brooks Scanlon Corporation and the Putnam Lumber Company by the A. C. L. Railroad at Jacksonville.

A substantial increase in the log rates on the basis of the Alabama log scale over the present Florida rate would seriously affect our past and present plan for the utilization of our timber located at Otter Creek, Homosassa and Withlacoochee. We would probably abandon our present plan of bringing the logs over the A. C. L. Railroad to the mill [fol. 743] at Lacoochee, and consider the advisability of selling the timber, erecting a new mill, or putting in our own log road. Any of these plans would be a great additional expense or loss not contemplated at the time of constructing our plant at Lacoochee. At the time of erecting the Lacoochee plant in 1923 we believed the Florida log rate stabilized, and until the hearing in this case at Valdosta, were of belief that the established Florida log rate was satisfactory and compensatory to the Atlantic Coast Line Railroad. Any substantial decrease in the quantity of timber relied upon as available to the Lacoochee plant would mean a substantial loss in writing off the cost of the investment in the Lacoochee plant.

(Intervenors' exhibits Nos. 26 to 30, inclusive, were thereupon received in evidence.) (Tes. p. 502.)

Cross-examination.

(By Mr. Carl Davis:)

The Witness: Our concern has a contract with the Atlantic Coast Line Railroad at the present time. I don't remember the name of the exhibit. That is the Otter Creek to Lacoochee one (Exhibit No. 28). The contract which was made with Mr. Chase and assumed by the Coast Line Railroad has expired; yes, sir. The contract we have reference to is the one for hauling logs from Otter Creek to Lacoochee (Tes. p. 502). This contract made with Mr. Chase covered transportation from Duval, Baker and Bradford counties, and Alachau County, over the Jacksonville & S. W. [fol. 744] division to Milldale. The road that I referred to as the J. & S. W. Railroad is a road that was constructed by our concern and afterwards purchased by the Coast Line. That contract expired by limitation after 15 years. The letter which I referred to as having been written to me by Mr. Walters was written during the life of that contract. That contract has never been extended. At the present time we have no contract with the Coast Line covering rates. The only contract is this Lacoochee contract and that covers the movement of logs in trains at the current rate. That contract provides that we make up the train and deliver it to the Coast Line and the Coast Line delivers it to our mill and we take it at our mill, but at the tariff rate (Tes. p. 503).

This line that I referred to as the Jacksonville & Southwestern extended from Jacksonville to a few miles west of Newberry, Florida, about 90 miles. And we found it reasonably possible to handle logs to our mill at Jacksonville, taking the logs from the mill and moving them to Jacksonville and manufacturing them there. This that we had applied only to certain specific movements between those points named on the Jacksonville & Southwestern and not elsewhere on the Coast Line (Tes. p. 504).

F. H. Wilson was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Osborne:)

[fol. 745] My name is F. H. Wilson. I reside at Palatka, Florida; and I am general manager of the Wilson Cypress Company, with headquarters at Palatka, Florida. The Wilson Cypress Company was incorporated under the laws of the State of Florida in 1891. I have been engaged in the lumber business since 1891 and with the Wilson Cypress Company during all of that time, with the exception of four years during which I was with the Florida Woodenware Company. The Wilson Cypress Company is engaged in the manufacture of cypress lumber (Tes. p. 505). It also manufactures shingles and laths. We are engaged exclusively in the manufacture of cypress lumber. We manufacture no other kind of lumber. The holdings of the Wilson Cypress Company, up to early 1900, were timber tracts located tributary to the St. Johns River. Since 1900 the company has purchased approximately 300,000,000 feet of cypress timber in Lafayette, Dixie and Taylor counties. We have but one plant, which is located at Palatka, Florida. Our logs have been drawn up until May, 1924, entirely from timber tributary to the St. Johns River, but since that date we have been getting approximately 70 per cent of our timber from Dixie County (Tes. p. 506). Prior to the time that we began cutting timber in Dixie, Lafayette and Taylor counties the amount of investment in the Wilson Cypress Company's plant and facilities at Palatka, Florida, was in round numbers $600,000. The Wilson Cypress Company purchased its holdings in Lafayette, Dixie and Taylor counties I think in the year 1903. We began cutting the [fol. 746] timber in those counties in May, 1924. Before we began cutting timber in those counties we found it necessary to increase the capacity of our plant at Palatka.

We made an investigation of the costs of establishing such a plant in one of the three counties named, bearing in mind the fact that we still had considerable standing timber located tributary to the St. Johns river and comparatively near our Palatka plant. After careful consideration of the existing freight rate on logs over the Atlantic Coast Line, we concluded that it would be more economical to increase our capacity at Palatka and move the logs over

the Atlantic Coast Line to that point, rather than build and operate an additional plant in the timber with a higher freight rate on the finished product. We increased our investment in the Palatka plant approximately a half million dollars. We would not have made this additional investment if we had not believed that the then existing freight rate on logs would be maintained. We have a contract with the Atlantic Coast Line covering the movement of logs from Dixie, Lafayette and Taylor counties, to Palatka. This first contract was dated December 1, 1923, which covered the movement of logs from Oldtown to Palatka and was on the basis of a car of 50,000 pounds. This contract provides for the payment of a proportional amount for tonnage in excess of 50,000 pounds. Our logs are transported over the Newberry and Perry divisions of the Atlantic Coast Line known as the Florida Southern branch, I believe it is (Tes. p. 508).

[fol. 747] Our contract calls for a train load of at least 30 cars per train every other day. We have run very little over the minimum of thirty cars, due largely to the fact that we have a constant supply of logs from the river, but as this nearby supply diminishes, we will, of necessity, be compelled to increase our loadings from these points in order to maintain the capacity of our plant. It is probable that a considerable increase will be instituted during the present year. The number of board feet carried per car has in the past averaged something over 4200. The last time we checked it up this average represented, in pounds, approximately sixty thousand. That is approximately 20 per cent in excess of the minimum load guaranteed under the contract. For use in this service we have about 100 cars equipped now (Tes. p. 509). These cars are equipped by the Wilson Cypress Company at a cost of (the first 73 cars that we had were bought through Mr. Foley) and I think at a cost of $100 a car for the equipment. We have been equipping with a different pocket lately, the cost running between $135 and $140 per car. I estimate the total investment in the plant at Palatka at approximately $1,100,000. This figure that I have given represents the actual cash investment. The appraised value of our plant at the present time would be in excess of this amount. In deciding to enlarge our plant at Palatka we relied upon the then existing

freight rate on logs in reaching our decision (Tes. p. 510). The freight rate was one of the controlling factors in our decision to enlarge our plant at Palatka rather than build one in the timber. As we had our plant at that time, we fig- [fol. 748] ured that we would have about fifteen years in which to depreciate our investment.

I attended the Valdosta hearing in this case in October, 1926, and I heard the reference made to the so-called Alabama-Georgia scale of logs. It is my recollection that the Alabama-Georgia scale is considerably higher than the present intrastate rate in Florida. It would not be possible for us to continue to operate our plant at Palatka and continue to move logs from our timber in Lafayette, Dixie and Taylor counties to our plant at Palatka under a materially increased freight rate. It would be impossible for us to operate under a material increase in rates. If such increased rates are ordered by the Interstate Commerce Commission, if we are not compelled to go out of business entirely, it will be necessary for us to move our plant from Palatka to the center of our standing timber (Tes. p. 511). Thereby the Wilson Cypress Company would be most adversely affected, because it would necessitate the outlay of an enormous sum to move our plant from Palatka to the timber, which would be a dead loss, and it would also necessitate disrupting our organization, formed and trained over a long period of years, and deprive us of our water rates and facilities. When this contract was made with the Atlantic Coast Line Railroad Company that company never did hesitate or protest about the measure of the log rates and I have always been under the impression that the Coast Line was glad to offer this rate and that it was one of the [fol. 749] best paying propositions they had in their line.

"Mr. Cotterill: If your Honor please, we are not compelled to do so, but are very glad to state that we are not interested in the question of the reasonableness of the interstate rate, directly or indirectly, at this time. We are not submitting any evidence which we shall rely upon as to the unreasonableness of the interstate rate" (Tes. p. 514).

The Atlantic Coast Line has never approached us with a proposition for abrogating this contract; it has never indicated a desire to do so. On the contrary, the last contract

for hauling logs under this rate was made in March, 1926, and became effective July 13, 1926. That is referred to and incorporated in the contract submitted.

[fol. 750] (Thereupon Intervenors' Exhibit No. 31, witness Wilson, was received in evidence.)

The Witness: The institution of this proceeding was the first intimation that I had that there was any dissatisfaction with the present Atlantic Coast Line log rate in the State of Florida. The service performed in the movement of logs from our place of cutting to the plant at Palatka is as follows: The Atlantic Coast Line delivers the empty cars on the delivery track at Hines, where our crew takes them, and takes them to the woods, loads them, and delivers them back to the receiving track at Hines in solid train loads, where the Atlantic Coast Line hooks onto them and hauls them to Palatka. The Coast Line performs no switching service at Hines. At Palatka, delivery is made in two shifts of fifteen cars each, necessitating only one movement (Tes. p. 516). Our company pays one-half of the inspection charges on these log cars at Hines, averaging about eighty dollars a month. We also pay for all repairs to cars while the cars are in our hands. All repairs generally known as "owner's defects," which are covered by M. C. B. rules, are also chargeable to our company.

I have no accurate figures on how much manufactured product is handled over water, but our estimate is that not more than 30 per cent of our output moves by water. It is not possible for us to receive logs over any other company than the Atlantic Coast Line from our timber in Dixie, Lafayette and Taylor counties.

We began operations in Florida in 1891. It was then [fol. 751] operated under the corporate name of Tilghman-Wilson Company, under which name we operated until 1894, when the name was changed to the Wilson Cypress Company.

These log trains move during the night time and not in the day time (Tes. p. 517). From my knowledge and experience in the cypress lumber business I can imagine no condition that would warrant the movement of cypress timber from Florida to Georgia under the present basis of rates or even lower rates (Tes. p. 517).

The approximate production of our plant at Palatka is about 33,000,000 feet a year. It was about 20,000,000 per year before the plant was enlarged.

Our contract with the Atlantic Coast Line required us to put up a bond to protect the railroad. A ten thousand dollar bond was required and has been put up. Our contract obligates our company to route our rail shipments of manufactured lumber over the Atlantic Coast Line, where the rates charged by the Atlantic Coast Line are not higher than competitive lines. From my general knowledge of the log movement over this particular branch of the Atlantic Coast Line Railroad I would say that the proportion of traffic represented by the log movement is 75 to 85 per cent (Tes. p. 518).

Our principal market for cypress lumber is the northeast Atlantic Coast from Baltimore to Portland, Maine. So far as I am informed we meet very little competition from Georgia mills. So far as I am informed, there is a cypress mill near Savannah, Georgia. There is also one at Albany, Georgia, that manufactures cypress lumber. Certainly, these mills, situated as they are, could not afford, under any rate adjustment, to transport logs from Florida to their [fol. 752] plants. Our principal competition is with Pacific Coast products.

I, along with several others engaged in the lumber service or business in Florida, had conferences with Mr. Delano and other officials of the Atlantic Coast Line in Mr. Delano's private car in the Jacksonville depot some time last summer, relative to the then pending case, now being heard. At that conference were Mr. Delano, Mr. C. McD. Davis and one other official whose name I do not recall, representing the railroad, and Mr. Coit, Mr. Waldo Cummer, Mr. Fleishel, Mr. Foley, and myself, representing the lumber interests. We discussed with the officials of the Atlantic Coast Line this case, and the purpose of this conference was to ascertain, if possible, the attitude of the Atlantic Coast Line with regard to this case. We discussed with the Atlantic Coast Line officials the reasonableness of the log rates under attack in this case. We discussed very freely with the officials of the Atlantic Coast Line the rates under attack. Mr. Fleishel and Mr. Foley went into the very seriousness of this proposed advance on rates, as well

as I can remember, and the Atlantic Coast Line officials, while they did not say anything definite as to just what their action would be, they gave us to believe they were going to do everything in their power to protect and justify the present rates. As I remember, they went so far as to state that they felt personally responsible for the location of the Carpenter-O'Brien plant at Eastport, now the Brooks-Scanlon plant, and they realized the fact that they did [fol. 753] locate at Eastport because of the rates they were able to get on logs from the Atlantic Coast Line; and, as already stated, they didn't come out and give us positive assurance, but we all felt they were going to do everything they could to protect the then present rates. We left the conference with the distinct impression that the Atlantic Coast Line would defend the so-called Cummer scale in its application to the log movements of the lumber interests represented at that conference.

I attended the Valdosta hearing and heard the testimony offered by the Atlantic Coast Line witnesses, Mr. White and Mr. Perrin.

I have had prepared in our office an exhibit showing the total capital asset of the Wilson Cypress Company as of January 31, 1926.

(Thereupon the statement referred to was marked Exhibit No. 32 and received in evidence.)

The first page shows the cypress timber standing in Dixie, Lafayette and Taylor Counties to be two hundred and fifty million feet, approximately, all owned by the Wilson Cypress Company. This page also shows the total number of employees of the company, 580; that the total population depending on this industry is 2,900.

Attached to my first exhibit was a map showing the situation at Hines with respect to the tracks, and this map reflects the situation as it is today at Hines.

My opinion, based on my experience as a practical lumber man, is that there is no condition that would warrant a movement of logs from Florida to Georgia (Tes. p. 522). [fol. 754] I do not know of any possible circumstance which now exists or which I can anticipate will exist in the lumber business that would cause or enable substantial shipments or movements of logs from Florida into Georgia. As

to what effect, if any, the supply of commercial timber in Florida has upon the movement or possible movement of logs from Florida into Georgia; to begin with, under present conditions the supplies of commercial timber in Florida are owned and being developed by existing lumber companies which have long since established costly mills in Florida, the capacities of which are adjusted to the quantity of timber owned. Therefore, if there were to be capitalists in Georgia having available to them resources for the acquisition of commercial timber supplies in Florida, they would be compelled to purchase from one or the other of the large companies now doing business in Florida, and, of course, that would mean purchasing the mills and all the equipment as well as the timber itself. That being done, it seems impossible to suppose that such a purchaser would dismantle or dispose of the Florida mill which he had already bought, and then construct a new one in Georgia. Assuming that one or more of the mills of the lumber interests in Florida were to burn, and the owners were willing to sell their timber, and there was a possible purchaser from Georgia to buy, and did buy such Florida timber, the kind and location of a new mill which such purchaser would construct would depend very largely upon the size of the tract of tim- [fol. 755] ber purchased. If the Georgia interests could acquire commercial timber supplies in Florida, and there was no mill owned by this Georgia interest, they would no doubt locate the mill in Florida. There is no commercial timber in Florida on the Atlantic Coast Line Railroad, close to any present or possible mill site on the Atlantic Coast Line Railroad in Georgia, that I know of. I shouldn't think in the location of a new mill Georgia interests would give serious consideration to building a mill in Georgia, regardless of the freight rate on logs. If we suppose there already existed in Georgia a mill large enough to accommodate timber holdings of the sizes prevailing in Florida, and which would have to be acquired, if any could be acquired at all, and that owing to a depletion of local sources of logs in Georgia, such mill was compelled either to close down or operate as best it could from log supplies obtained in Florida, it would be a pure speculation as to what might

be done under such circumstances. We know, however, that there is no such mill on the Atlantic Coast Line in Georgia at this time. In other words, the lumber mills in Georgia on the Atlantic Coast Line Railroad are comparatively small and could not possibly, or economically, attempt to handle any one of the larger timber tracts in Florida. The lumber intervenors in this case have mills in the vicinity of Jacksonville and Palatka, and transport logs by railroad under the so-called Cummer scale comparatively long [756] distances, and I will explain why a mill in Georgia could not do likewise if it had the Cummer scale on movements of logs from Florida to Georgia. It is true that there are mills in Eastport, Jacksonville and Palatka hauling logs on the Coast Line a considerable distance under the Cummer scale. This is due to the fact that the mills are already in existence at these points, namely, Jacksonville, Eastport, Palatka, and Lacoochee. The mills have been constructed a considerable length of time and were so constructed at a time when conditions were entirely dissimilar to those now in existence. Large amounts of money have been invested in these existing plants. As to how it happens that our company continues to operate at tidewater in view of the statement I have just made: The locations of these plants, where such investments were made, and have been continued, notwithstanding the disadvantages of being located so far away from the sources of timber supply, are, first, the location of the mills when constructed at tidewater, were thereby assured cheaper water transportation as well as cheaper rail transportation than now exists for the outbound products.

Jacksonville, Florida, January 19, 1927.

F. H. Wilson was thereupon recalled as a witness and, having been previously sworn, testified as follows:

Direct examination resumed.

(By Mr. Osborne:)

As to whether there is any body of cypress timber in the [fol. 757] northern part of Florida not owned by the Flor-

ida cypress mill operators that could, in my opinion, be logged profitably to any mill wherever situated, I do not know of any such body, no sir. I should say that practically all of the cypress timber in north Florida is now owned by the present operators operating in Florida; and the remaining part, if there is a small per cent of such timber, it is so scattered and so inaccessible, and in such small tracts, that the logging of it profitably, even on the Cummer scale, would be practically impossible.

The total freight paid by the Wilson Cypress to the Atlantic Coast Line Railroad for the month of September, 1926, on logs moved under our service contract with that railroad was $7,344.37 and the total number of feet of logs moved during that month 1,458,055 feet. Since the month of September we have increased the number of cars in each log train to approximately an average of 34 cars per train, which has increased our monthly production from Hines to 1,800,000 and put the freight up to approximately $8,000 a month.

In my exhibit 32, which sets forth the total capital assets of my company, I did not include any allowance for investment in cypress or timber holdings. This statement concerns merely the physical assets at our manufacturing plant and logging equipment. It does not include any item as to land holdings. And no timber rights (Tes. p. 530).

Cross-examination.

(By Mr. Perry:)

[fol. 758] The investigation which I have made that leads me to the conclusion that there is no timber in the territory I speak of in north Florida that would be desirable or profitable in being handled by some other mill, is the general observation that I have been able to gather from the various owners of the present holdings that have naturally taken up everything that they could possibly get hold of that was tributary to their holdings. I have not made any personal inspection of that territory. I have had occasion to go into our particular territory to see whether or not there was other timber desirable and bought all in our immediate territory and none was left for sale there that I know of. The territory I speak of does not cover north Florida, only

three counties. I am acquainted with Dixie, Lafayette and Taylor counties (Tes. p. 531). I am familiar with the territory 170 miles from Valdosta, Georgia, as covered by the Atlantic Coast Line Railroad, only in a general way. I have personal knowledge from information we have had from cruisers on different tracts. I wouldn't be interested in timber in that territory with our mill located where it is. Therefore, I am not concerned and have not made any investigation but stated what I understood from general information. But we consider it is right from the fact that we have been at considerable expense in going over the timber in a great many of these different counties, even up in Georgia, the southern part of Georgia. As to the pine timber in that section, all that I know about it is hearsay. I [fol. 759] haven't had the experience as to pine timber that I have as to the cypress timber. I only know about pine timber in that section in a general way. I know of the larger bodies; also it is pretty well cut out and held by big owners.

Albany could not under any circumstances be interested in these timber lands in Florida, because of the freight rate. I mean any freight rate. If they had an opportunity I don't know where they would be able to pick up a body of any size at all, that is, a body that would allow them to log it profitably and freight it to Albany (Tes. p. 533). It would not depend on the freight rate; not on the present Cummer rate; I don't think they could do it. I don't know the exact distance that would be, but of course, that would depend altogether on where the timber would be. It is a general conclusion of mine, it is a general observation, but I don't think I am wrong, though.

I have no objection to extending this Florida scale into Georgia (Tes. p. 534). As to whether it should be extended into Georgia if it is allowed to remain in Florida, I think it depends entirely on what there is to justify the establishment. The possibility of timber in sufficient bodies being purchased that would enable some mill to manufacture is a condition that would justify it. That would have to be in very large quantities, which, as I have already stated, do not exist. As to how much would be a reasonable amount of timber that would justify the extension of this rate into Valdosta, Ga., in a given tract within a distance of 175 miles

of Valdosta, I would say approximately a hundred or a hundred and twenty-five million feet. One hundred and ninety million feet would, then, be amply sufficient ac- [fol. 760] cording to my judgment to justify the extension of the Florida scale into Georgia, yes (Tes. p. 536).

(By Mr. Cotterill:)

"Q. Now, then, Mr. Wilson, I ask you whether or not, in any answer that you have given to the last four or five questions, did you intend, or not intend to leave the inference that even under the Cummer scale, as we are describing it, if it were effective from an origin in Florida to a destination in Georgia, and there were one hundred and ninety million feet of timber available in Florida, that even in that event did you intend to leave any impression as to whether, in your opinion, it would be practicable or feasible to transport logs from that one hundred and ninety million foot patch to a destination in Georgia under that scale?"

"A. I don't; no, sir. The extension of the Florida scale into Georgia is immaterial to me.

"Q. If you had a lumber interest at Valdosta, Georgia, a manufacturing plant in Valdosta, Georgia, and there was timber sufficiently near Valdosta, to make it attractive as a business proposition, and you would be allowed to draw that timber into your Valdosta mill, should you or not have a rate, interstate, that would make it possible for you to go to that and to put you on an equal footing with a competitor in Florida where the rate is lower?

"A. If I had a mill and a proposition of that kind in Valdosta of such capacity as the mills are in that part of the State, I wouldn't consider ever bringing the logs to Valdosta" (Tes. p. 539).

I would put the mill into the timber because it would be an economical way of manufacturing the timber regardless of any log rate; not because I had access to the Florida rate at Valdosta. As to whether the haul has anything to do with the purchase and disposition of lumber, that depends [fol. 761] altogether on the quantity, and the plant that is to manufacture that timber. As to whether a man can compete in the manufacture of lumber and pay the present

interstate rate Florida to Georgia, in competition with a man who is shipping his logs over the present log rate in Florida, that depends upon a great many things—the price of the stumpage. The question of freight rate does not enter into the cost of stumpage. I don't think that the [fol. 762] question of freight rate enters into the purchase price to be paid for stumpage. Whoever buys that has the privilege of manufacturing it on the ground, or if they choose to haul it to some other point, why that is also their privilege; but it has nothing, I should say any bearing, on the price of the stumpage. As to whether if you go into the timber to put in your mill and saw it, you have got an added freight rate in getting it away from there, that is not on the lumber, you may have an added freight rate, but it will be a good deal less than the freight rate on logs (Tes. p. 540).

"Q. Do I understand from your answers to the questions asked you a while ago as to a man paying the interstate freight rate from Florida to Georgia, as compared with a man who has the Florida rate, that it would make no difference if you were located a given distance from timber, if you are in competition with a man who has a half or a third of the freight rate that you have, it would make no difference to you in the results of your operation—if you were in competition with a man who was enjoying a freight rate a third as much as you are paying, would that or not affect your business?"

"A. It would no doubt affect it some, yes, sir."

"Q. Well, how much would it affect it—just the difference you pay and your competitor pays for the delivery of the logs?"

"A. Well, one might have an advantage over the other on the finished product."

"Q. Wouldn't that be entirely due to the logging cost?"

"A. Which is that, the difference?"

"Q. The difference, yes, sir."

"A. No, I say there might be an advantage in the freight on the finished product that would offset part of that logging cost."

[fol. 763] I heard Mr. Giddens or Davies—testimony as to the advantage that the Florida manufacturer has over the Georgia manufacturer, the intrastate rate in Florida on the

one hand, compared to the interstate rate on the other, was as much profit as he would care to make on his investment. I don't think he is right about it.

"Q. You don't think the advantage that the Florida manufacturer has is sufficient to justify a fair return on a fair investment,—a fair investment at a fair value?"

"A. I don't think there is anything to that, no, sir."

"Q. Now you stated yesterday afternoon, Mr. Wilson, that you made all of this investment on account of this rate that you enjoyed, and which you say is necessary to continue, otherwise your property would be confiscated; is that correct—or the word "confiscation" or "destruction"?"

"A. Well, it would be practically that; it would mean that we would have to move our present plant into the timber."

"Q. Why can't you operate your plant on the same rate that your competitor in Georgia operates on, interstate, if you have to move on that rate; why can't you do it?"

"A. It just can't be done; you can't pay a whole lot of additional freight and make any profit out of it."

"Q. You say the logging cost is a very small item that enters into it?"

"A. I beg your pardon. I did not" (Tes. p. 542).

I said the logging cost was very small. The rate on logs has never been given consideration when I went to buy any stumpage that I know of. The question of freight rates does not enter into the price I pay for stumpage. As to whether that is because the rate is uniform where we go from our mill, that is not the reason for it; that does not [fol. 764] enter into it; we buy at various places all over the State. We consider the freight rate on logs in getting our logs into the mill, absolutely. If we enjoy a rate a third of what our competitor pays, we have an advantage over him in the market, yes. As to whether I think we ought to have it, I think we ought to have a rate that we can at least show some little profit (Tes. p. 543). If we were to have to pay [fol. 765] a higher rate or give up these rates that are referred to as being preferential or discriminatory, it would work a destruction of our property and we would have to dismantle the plant here, there, or elsewhere, or certain portions of it; yes, sir.

"Q. Now, with your knowledge at the time you made the investment, with the condition in the contract that it is to be terminated on thirty days written notice, don't you think you took a long chance in making this hazardous investment, as it appeared to be?"

"A. We undoubtedly did, yes, sir."

"Q. That contract can be terminated at any time on thirty days written notice?

"A. Yes."

"Q. So, after all, Mr. Wilson, are the facts these: that you have got a distinct advantage in freight rates over various competitors and you want to continue to enjoy it; isn't that true?"

"A. I don't know who those competitors are, no, sir" (Tes. p. 544).

We don't consider the Bray Lumber Company at Valdosta or any lumber company at Valdosta as competitors. They don't enter into competition with us; that is, so far as we know.

"Q. I will ask you this; is it an admitted fact that you have a distinct advantage in freight rates in Florida?"

"Mr. Cotterill: Mr. Perry, when you use the word "advantage," I don't know whether the purpose is shown and by that you mean that there is no more than a difference in the mileage scale between Florida and Georgia, or a mileage scale in Florida, or whether you have a technical purpose in mind and are seeking by this witness to show there is an advantage that he wants to make on logs. Now, when you use the word "advantage," I am compelled to ask that the witness be not required to answer until he is made [fol. 766] to understand whether counsel means there is a difference only in the sense of those two mileage scales, or whether he is using the word "advantage" in an important legal sense, in a commercially hurtful sense."

"Exam. Brown: You are not using the word "advantage" in a legal sense, are you Mr. Perry?"

"Mr. Perry: No, sir. Between the two freight rates as reflected and the only two that are reflected here."

"Mr. Cotterill: To ask this witness if there is any difference between the two mileage scales is simply to take up time."

"Q. Mr. Wilson, you have an advantage in your freight rate, compared to freight rates in the territory generally contiguous to Florida, haven't you?

"A. You mean outside of Florida?"

"Q. Yes, sir."

"A. Yes, we have. We have not an advantage over our competitors, though, in freight rates."

"Q. Well, it is a question of who your competitors are, isn't it?"

"A. Yes, sir."

We hope to continue to enjoy the rate in existence (Tes. pp. 546, 457).

I do not consider Reynolds Brothers at Albany, Georgia, competitors of ours. We don't sell in the same market. Well, I won't say that. I don't know where they sell. We sell in the northeastern estates from Baltimore to Portland. I am not acquainted with their operations at Albany and do not know where they sell. I reach the conclusion that they are not competitors because we never hear of them—we never hear of any competition from them (Tes. [fol. 767] p. 547). There is no reason why they cannot compete. I don't know as we have an advantage over the rates they pay. I don't know as they are logging in Florida at all. They may have some logs that we don't know. I should not think they could log in Florida under the same rates we have, no sir.

"Q. This much more as to the question of contract, and to get it clear: If this contract that you have, providing for this thirty days written notice, the termination of it on thirty days written notice was put in there, as it was, for the only purpose that it could have been put in, is it or not true, Mr. Wilson, that the question of the freight rates has very little to do with the future operations of your plant where they are now?"

"A. It is not true, no, sir" (Tes. pp. 548, 549).

As to whether I am firm of the conviction that an increase in rates would put us out of business,—it would compel us to move our plant from Palatka to some point near the timber after we had finished logging what timber we have tributary to St. Johns River. The farthest distance we are drawing logs at this time to our Palatka mill is 120

miles from Hines (Tes. p. 549). We do that profitably, yes. As to whether we could haul them profitably under our present rate 170 miles, I don't know what the rate for 170 miles is.

Our contract does not fix any rate. We have not any contract with the Atlantic Coast Line that does fix any rate. I don't think we have ever had any such contract, no. The thirty-day contract simply provides for service under the existing tariff rate. Our mill at Palatka does not draw logs from any other line than the Atlantic Coast Line. Our company has a mill only at Palatka.

The certain capital items which I said were not included in the capital assets in my exhibit No. 32 is simply what we call capital assets or our plant equipment and log equipment and autos and trucks, etc. We don't consider our [fol. 768] timber and lands as part of our capital assets. The approximate value of the standing timber in these three counties referred to in my exhibit, Dixie, Lafayette and Taylor counties, would run in round figures I should say practically three million dollars (Tes. pp. 550 and 551). The basis for the statement that a population of 2,900 is dependent upon the industry is based upon five to an employee, a family of five. I stated that I am not interested one way or the other in the extension of he Florida intrastate rate to apply to interstate commerce between Florida and Georgia. If the Florida intrastate rate were extended interstate into Georgia in my opinion there would not be any effect upon our industry with respect to competition which might be created by the lower rate which Georgia would then have. We don't fear the competition which would be effective if they got the lower rate because of the fact I know of no timber that could be purchased that would make an effect (Tes. p. 551).

Redirect examination.

(By Mr. Osborne:)

My company does not come into competition with any of these mills at Valdosta and Climax, Georgia. I can't see where there would be any practicable factor that would permit these Georgia mills to come into Florida and draw logs from Florida on the so-called Cummer scale and at any

margin of profit to those mills. It seems to me the only profitable way that scattering tracts of that kind might be operated would be with portable mills. In my opinion the [fol. 769] difference between the present interstate rate and the so-called Cummer scale does not prohibit these Georgia mills from coming into Florida. Our finished product of manufactured lumber moves probably 30 per cent by water, by schooner; and the remaining by rail (Tes. p. 552). We make some of our outbound shipments by water to the eastern ports. The fact that our mill is located on tidewater is one of the principal reasons why we are enabled to draw our logs from Hines a distance of 120 miles and operate at a measure of profit, the fact that we have the advantage of the schooner rates as compared to rail rates.

Recross-examination.

(By Mr. Perry:)

I do not know of any manufacturers of pine lumber in Florida that are in a position to draw logs from points within 170 miles of Valdosta on the Atlantic Coast Line Railroad. No, sir, I do not. A Jacksonville mill would not be interested in logs in that territory nor anyone else that I know of. As to whether there are any mills within the northern part of Florida sawing pine lumber on the Atlantic Coast Line Railroad, there are mills in Jacksonville, but I don't know how far Jacksonville is from Valdosta.

D. W. KEENE was thereupon called as a witness and having been first duly sworn, testified as follows:

Direct examination.

(By Mr. Cotterill:)

D. W. Keene. I am a yard conductor on the Atlantic [fol. 770] Coast Line Railroad. I work in C yard, from C yard in Jacksonville to Eastport, to Milldale and Eastport. My duties as yard foreman are to place cars and carry trains, and my principal duty is to handle log trains, full and empty, to Brooks & Scanlon. The switching locomotive

[fol. 771] and crew first get hold of the log trains at two places. Sometimes we take them at Kings Road yard four miles from Milldale, but generally we get them at Milldale. I can carry them to Eastport. Then we bring all empties from Kings Road yard (Tes. p. 555-556). There is a different movement on empties from the loaded cars. The loaded cars generally go to Eastport with the train crew and the others go to Milldale. These crews work in eight-hour shifts. That is their minimum day, but we work longer than that on the job. That is not every day, no, sir. Some days are longer than others. According to the way I figure my time, we make about nine hours a day. At times we work longer and some days we don't work but the eight hours. When the switching locomotive and crew takes hold of the log train and takes it out to the mill it weighs it at the mill. Then he takes a transfer and brings it back to Milldale.

I guess those mills make lumber; from the looks of them they make a whole lot of it. They have to switch the lumber out of the mills. The Eastport crew does the lumber switching; not the same one that brings in the logs. The Brooks-Scanlon people have their own engine at the mill. I do the transferring of the lumber myself, or whoever is foreman of the engine. A good deal of saw dust accumulates out there at the mill. The saw dust has to be moved around and disposed of and they ship lots of carloads of it. Whoever is on the crew handles that.

I keep a right exact record of what I do and the time it takes to do it out there (Tes. p. 557). About two-thirds now [fol. 772] of my time is consumed with that business, the total time the locomotive and crew operates in connection with the work it does on that Eastport business. That is two-thirds of the standard eight-hour day. Well now, I mean of my day. One day I might put in fourteen hours and tomorrow I might put in but eight, but if it goes over the standard you don't get your empties away from there. I mean two-thirds of a working day. Assuming a working day of eight hours, a total of that eight hours devoted to the business of the company is about two-thirds (Tes. p. 558). In the two-thirds of the eight-hour day we do no more than handling logs, and making up our trains, you have to make your trains up. That sawdust transfer comes over to Milldale; I bring that over to Milldale, and the lumber, that

comes to Milldale. We do not do those additional things in that period of five of the eight hours. You are getting wrong now about that period. I repeat, that from the time I go on the job until the time that log train is delivered, [fol. 773] then I keep that. From the time I report there back for the empties until I get in, is devoted to Brooks-Scanlon. Now I ain't counting this other third of a day in handling that stuff that comes away from there.

The starting time is 8:15 (Tes. p. 559). The first thing I do I get hold of the log train at C yard at 8:15; go to Milldale and catch a train and get over there about 10:30 or 11 o'clock, and then weigh the train; it takes about 45 minutes to weigh 45 carloads. Then I have a transfer there already made up of lumber from the mill; I take that and bring it back to Milldale. That takes about 25 or 30 minutes to bring it over there. That is lumber and sawdust. And I stay there until about 2 o'clock or 1:45. Then I work other industries; then I work the Standard Turpentine or the Florida Wood (Tes. p. 560). That is after I get back from Milldale; then I leave that, I don't handle that any more. I don't do anything more for the lumber company until I leave there again. Then I start back generally at 1:45 or 2 o'clock that afternooon. After 2 o'clock take some empty box cars over there for them to load. It takes about 25 minutes to run over there with ten or twelve box cars. If you have got flats on that road, we get them and turn them over to the inspector. You have to make up a train. It will take about an hour, probably, to switch the 'bad orders' out and get them next to the engine; and you have got to leave there by not later than 2:50 or 2:45 to get in on your eight hours; it may run more (Tes. p. 561). It takes about [fol. 774] an hour and a half or forty-five minutes to go from Eastport to Kings Road. It is about 12 miles. It takes more than an hour and a half for a switch engine to run about 12 miles. You have to go up there; you carry them up in Kings Road yard and carry your bad orders and carry them into the rip track. You have got the bad orders next to your engine. You have got to take them into the yard. That hour and a half it takes us from Eastport to Kings Road is nearly all running time except when you stop to take water. Twelve miles is all. Yes, sir, I can walk nearly that fast (Tes. p. 562).

I get out to the plant about 10 or 10:30 or 11 o'clock. I don't know exactly how far it is from Milldale; it might be some six or seven miles. Sometimes it does not take two and a half hours to go six or seven miles. I have had it to take me two hours and a half. That is not generally the case every day. I have had two hours and a half going from Milldale to Eastport. In the ordinary day it will take you about an hour and ten minutes (Tes. p. 563). It takes about an hour and ten or fifteen minutes to go that six miles with a train of logs. As to what else I do in that hour and ten minutes besides take the log train, I do not handle any other freight at all, no cotton for anybody, no. We don't pick up any and don't set off any. It takes an hour and ten minutes to go that six miles because you have to cross drawbridges and reduce speed and slack up for crossings. There is a whole lot where you can't run at railroad speed. [fol. 775] I do not say there is 25 crossings from Milldale to Eastport. I don't know as we go through there; we cross Pearl Street and there is only four of these that have to be flagged, you have got to absolutely come to a stop, and then you cross a railroad crossing, the Seaboard, and they have an interlocking plant there, and it may take longer to get through that; that is another stop (Tes. p. 564). Six miles in an hour and a half wouldn't be very much slow walking for me. I would have to spin it up pretty peart to go six miles in an hour and a half. I first said I got out to the plant at 10:30 or 11:00 o'clock in the morning. As to whether it took me two hours and three-quarters to get out [fol. 776] there, well, when I start to work, I have got three pickups to get them logs together. Then before you start it takes thirty minutes for an engine to pump the air up on forty-five cars, before you can ever start of course. That all comes in your work, too. We never get there earlier than 10 o'clock or a little after ten o'clock (Tes. p. 565). Oh, I couldn't tell you the length of haul that is involved in these transfers of lumber and sawdust. The most of it is just shipments right around the city here. I don't bring the lumber any further than Milldale. That is about six miles. It is four or five or six miles. I don't know how far it is. To get back to Milldale it takes about 25 or 30 minutes from the time we leave there and get the air up to run it. You have got no load then. To couple up and start it takes 25

or 30 minutes; it will average about 30 minutes. It takes about 30 minutes to go back that six miles after you have your air and are ready to go (Tes. p. 566). It takes you about 30 minutes to get your air, couple on those cars. Now one time I may be light, and the next time I have got a drag an engine can't hardly pull, when I come away from there with 45 cars of logs. I shouldn't think there would be any difficulty for a switching engine to carry the logs over five miles an hour unless you get out of steam, your engine is working all the time and once in a while you have to stop; I believe that an engine could run at twenty miles. The figures I gave are three miles an hour, at the speed we are getting.

[fol. 777] "Q. What else do you do besides getting the air between 8:15 in the morning and 10:20 or 11 in the afternoon, other than moving the train out?"

"A. What do I do all day, you mean?"

"Q. No."

"A. Going after that train."

"Q. You see, we have got a six mile haul in the morning, and you say that takes you two hours and a half to two hours and three-quarters, of which thirty minutes is used in getting your air?"

"A. You have got to go over there; it takes you about forty or forty-five minutes to weigh those cars after you get over there, and it is not delivered until it is weighed."

"Q. All right. That is forty-five minutes for weighing; we have got that. That accounts for one hour and fifteen minutes out of two hours and a half, leaving an hour and fifteen minutes in that direction for a six mile haul, and in the other direction, I think you said, twenty-five or thirty minutes?"

"A. About thirty minutes."

"Q. Now, why does it take you thirty minutes in one direction, and an hour and fifteen minutes in the other direction for the same distance between the same points? Is that due to the fact that one train is logs and the other is lumber?"

"A. One train you have got cars coming back, and the other you haven't; you have got a number of cars,—you haven't got the number of cars and you haven't got the

load, transfers—transfers aint over eighteen cars, fifteen or ten."

Cross-examination.

(By Mr. Carl Davis:)

I have worked for the Coast Line I would say something about a little over forty years. This button that I am wearing was given me for 25 years' service. Taking it by and large, my average day is about nine hours, and that the [fol. 778] time I devote to the handling of these log trains is about two thirds of the time (Tes. p. 569).

Redirect examination.

(By Mr. Cotterill:)

The reason why we have to exceed an eight hour day on the average is because over at the mill by not having the logs unloaded, there is generally a delay. After I get over there I have to wait for the logs—the empties; they unload the log train and I have to wait to get the empties to go back to the woods. That's the last thing I do in the day; when I get the empties. When I get the log cars loaded, there is nothing in those trains besides logs.

(Witness excused.) (Tes. p. 570.)

T. W. Hansell was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Carl Davis:)

I am superintendent of terminals of the Atlantic Coast Line at Jacksonville, Florida, and have been there the last time eight years; previous to that, six years and a half; a total of 14½ years. I am familiar with the movement in connection with log trains handled over that Jacksonville & Southwestern. The engine in the morning starts at the shop, which is adjacent to C yard, and goes out from there on the main line through the interlocking plant at Moncrief,

[fol. 779] and then to Milldale ordinarily. It is about five or six miles from the starting point to Milldale (Tes. p. 571). The crew reports for duty at 8.15 A. M. It takes the engineer from eight to fifteen minutes to examine his engine, to know that he has the necessary supplies, tools and equipment, and oil up around, and leave. He proceeds to the Moncrief interlocking plant, over which there are hundreds of movements per day. Sometimes he is fortunate to get through that interlocking plant without delay because of no other trains being there at that particular time; at other times there are one or more trains ahead of him, he is delayed from ten to twenty or thirty minutes, and occasionally longer than thirty minutes, getting through the interlocking plant, enroute to Milldale. He proceeds to Milldale, where he finds his log train on two tracks, because it is too long for any one track at Milldale.

If there by no delay at all, which rarely occurs, it takes about 20 minutes to get to Milldale.

He doubles the two cuts at Milldale together, coupling the air, the car inspector inspects the air, and, if everything is O. K., he proceeds to Eastport. With some of our engines he can run it in forty or forty-five minutes; with others in an hour to an hour and a half, depending upon the condition of the engine he has on this particular day. On arriving at Eastport he weighs those logs, which consumes from forty minutes to an hour, depending on how [fol. 780] fortunate he is in getting the cars uncoupled and so on. And then turns the train over to the Brooks Scanlon engine. He then takes a transfer of probably from eighteen to twenty cars which they have prepared for him, consisting of the outbound loads of lumber and saw dust, and occasionally some empty cars that they don't need, and returns to Milldale with those cars. Then he works the plant of the Florida Wood Products, and the Arnold, Stone & Pyle Company, the Norwood Lumber Company, and two freight tracks, consuming forty-five minutes to two hours, depending on the amount of switching he has, which varies materially. Then he comes back to Milldale, and there he picks up the empties which have been ordered by the Brooks Scanlon Corporation on the previous day for that day's business, consisting of from eight to twenty-five, I should say, varying from eight to twenty-five cars, carries

them to Eastport, and delivers them to the Brooks Scanlon Corporation. Then he gets the empty log train together and has an inspector to go over it. Such cars as are not suitable for return to the logging camps are switched out and placed next to his engine. Then he proceeds to Moncrief interlocking plant and gets over it as quickly as he can, sometimes immediately, and sometimes ten, twenty or thirty minutes, and occasionally a little longer; goes over to what is known as Grant Crossing, the Kings Road siding —there are three of them there. There he sets out the good order log cars. When he has done that, he proceeds [fol. 781] back to the main yard, known as C yard, and gets rid of these bad order cars in the bad order track. Then carries his engine to the shop, the point from which he has started, and he has completed his day's operation, which usually will average, I should say, nine hours per day. Some days it will run as high as fourteen hours; on others he will complete it in seven, eight, nine, ten, eleven or twelve, but the average is nine hours.

It is sometimes necessary in the morning for him to go not straight from C yard to Milldale, but to go up to Kings Crossing yard. It is quite a long run from Perry and Carbur, both, from Milldale; if you have any trouble with the engine, or if the crew are on short time, they set the crew off at these three stations I have previously named, which are southwest of Moncrief. Then he goes up through the interlocking plant to the left instead of the right, a practically opposite direction from Milldale, a distance of about a mile. There he picks up this log train which has been set off by the main line crew, and again gets through the interlocking plant, being subject to the delays incident to a busy interlocking plant, and goes through the program which I have previously outlined.

Some of the activities which I have described here might possibly be described as ordinary plant switching, all of it except the handling of the log trains and empties. There should be deducted from this nine-hour day, as near as I can estimate it from watching it for a good many years, [fol. 782] about one third of the day's work. A part of that, however, is incident to the operation that the lumber company at Eastport, their business—but it is not entirely

and solely due to handling the log train and its empty cars. Two thirds of the day is properly assignable to the handling of the log trains as nearly as I can figure it by watching it for about eight years.

Cross Examination.

(By Mr. Cotterill:)

As to whether, if two thirds of the day assigned by me to all of the operations of the switching crew in behalf of the company we are speaking of, that leaves one third of the day which is employed in the service of those other companies I have named,—no; a good part of that one-third which is not devoted exclusively to handling log trains and these empty cars, is also devoted to handling business of the Brooks-Scanlon Corporation, some part of it. As to what these locomotives and crews do for these other companies than Brooks Scanlon, it takes loads to those plants that I mentioned and brings out such empties as are ready to leave and such loads as they may have to move out. They do not get the empties for these plants; they are brought to Milldale by another engine. They are [fol. 783] spotted by this engine, but are brought to Milldale by another engine (Tes. p. 576). Those plants are about a mile from Milldale and this switching locomotive and crew spots the empties and pulls the loads. They switch each plant once a day; as to how many plants there are, there is one, the National Turpentine Products Company, that does a good deal of business and they handle many cars for them; the others are small and won't have but a car a day or probably two. This switching locomotive has to go from Milldale out to all three of these plants and in addition it spots the empties and loads as well and brings them back to Milldale. Our Milldale switch engine carries them from Milldale to the main line (Tes. p. 577). That is not used at all in connection with Brooks-Scanlon except to haul the empties to and from Milldale and the outbound loads away from Milldale. Of that one-third of a day, even a part of that is devoted to service for the Brooks-Scanlon Company, I should say one hour, roughly speaking. I should say hat all of that switching for three other companies a mile away from Milldale is accomplished

within a two-hour period easily, sometimes less. The reason why it takes so little time to do all that switching for three other companies, and yet we put in seven hours for [fol. 784] Brooks-Scanlon, is because they do so much more business than all the other companies put together. If there were no Brooks-Scanlon Company at all that switching locomotive and crew would not start out in the morning at all. We would not do it. The Milldale engine would do the switching for the three other companies. It does it occasionally when the other train is late (Tes. p. 578). The Milldale engine starts from the Moncrief shop.

I have charged all of the dead time of this switching locomotive in getting from its starting point in the morning out to Milldale to the log traffic alone because that is what he is engaged in. If there were no log traffic this locomotive would not have to do the same thing for the three other companies; not this one, but some other locomotive would; and this other locomotive, while starting out from Moncrief, would go from Moncrief to Milldale, and at Milldale perform the switching for those three companies, and for a good many others too (Tes. p. 579).

M. L. FLEISHEL was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Adair:)

My name is M. L. Fleishel; president of the Putnam Lumber Company, Jacksonville, Florida. I have been connected with the Putnam Lumber Company ever since they started operating in 1918. Their business is manufacturing pine and cypress lumber at Jacksonville, and they have been engaged in that business since the 1st of January, [fol. 785] 1919. Prior to that time I was general manager of the Brooks-Scanlon Company, which was at that time the Carpenter-O'Brien Lumber Company previously (Tes. p. 580). They are engaged in the business of pine lumber nearby Jacksonville. My connection there continued from 1913 to 1919, from their beginning.

The Putnam Lumber Company has timber holdings in Florida, located in Dixie, Taylor, Lafayette and Volusia and Flagler counties. The approximate extent of the holdings is something over a billion feet of pine and cypress. The Putnam Lumber Company timber was purchased by Mr. William O'Brien and his associates back in 1900. At that time Mr. O'Brien was president of the Carpenter-O'Brien Company, and the largest stockholder. I know something of the timber holdings of the Carpenter-O'Brien Company, now Brooks-Scanlon Company. They had no relation one to another at the time that the Putnam Lumber Company acquired its timber about 1900. When we first started operating, the holdings of the Brooks-Scanlon Company were located in Jefferson, Madison, Taylor, Lafayette, and a little in Alachua counties.

As to when the Carpenter-O'Brien timber was acquired: There were three or four holding companies prior to the organization of the Carpenter-O'Brien Company; one company was known as the Gulf Land Company (Tes. p. 582). The same group of men that afterwards owned the Carpenter-O'Brien Company were interested in that. The Gulf Land Company then purchased from the Southern Timber [fol. 786] & Naval Stores Company and the McNair & Wade Land Company and the La Cross Investment Company substantially 400,000 acres of timber—something over that; and that timber was all put into what is known as the Gulf Land Company. The Gulf Land Company was then—all of the holdings of the Gulf Land Company were then put into what was known as the Carpenter-O'Brien Company. The Carpenter-O'Brien Company when it was first organized consisted largely of William O'Brien, E. B. Putnam, George C. Howe, L. P. Piper, Edward F. Swift, A. J. Lammers, and several smaller ones. Quite a few of them were the parties principally interested in the Pútnam Lumber Company; some of them were not interested in the Putnam, but three or four of the larger stockholders in the other group were also stockholders in the Putnam Company. There was substantial interlocking control. It was entirely under the control of the same men (Tes. p. 583). Included in those various purchases in the aggregate were something over three billion feet. Included in that also was what was known as the O'Brien-Irwin tract of timber, which

is now a part of the Brooks-Scanlon Company's holdings that we sold them several years later. In addition to that I want to qualify it—one other man I should have put in there was W. L. Roach. The Putnam Lumber Company and the Brooks-Scanlon Company have since taken all of the holdings of all of that group since the Standard Lumber Company—Mr. Roach—who was at that time president of the Standard Lumber Company—was also a substantial [fol. 787] stockholder in the Musser Estate in the Carpenter-O'Brien Company. I will give you the circumstances surrounding those purchases historically.

In 1912 S. J. Carpenter and myself were in Louisiana and we had already bought something over one hundred thousand acres of timber on St. Andrews Bay. About that time, this group of men who were trying to get all of these properties together, approached us with a view to coming over here and merging all of the interests above referred to into one big corporation for building three or four big saw mills at Jacksonville or Fernandina, somewhere on tidewater. We undertook to do that. Mr. Carpenter and myself sold out our holdings on St. Andrews Bay, came over here, and undertook to—largely under the domination of William O'Brien—to put all of these properties into one big holding company. When we started out to do that, the O'Brien Lumber Company and the Putnam Lumber Company's holdings had no mortgage whatever on the property, it was all free. All of these other companies had very substantial underlying mortgages against them; and, being unable to get rid of these liens, Mr. O'Brien was never willing to put them into one company. So the plans were changed somewhat, and the holdings that were then known as the Southern Timber & Naval Stores Company, the McNair & Wade Land Company and the La Cross Investment Company, were put into a corporation known as the Carpenter-O'Brien Company, and they assumed all of [fol. 788] the indebtedness of those holdings. We then looked over the territory pretty carefully, with a view to locating saw mills on tidewater. At that time there was substantially a five or six cent per hundred freight differential in favor of Jacksonville over locations in the woods by reason of what was known as a water competitive freight rate on lumber. We surveyed out the whole terri-

tory, and had about reached the conclusion that we would buy what was known then as the Florida Railroad, which was then operating from Perry, Florida, to Live Oak, Florida, owned a right-of-way, and had built the grade substantially from Live Oak almost to the city limits of Jacksonville, in addition to which they owned a right-of-way from that point on into Fernandina. The port charges at Fernandina and the cost of towing vessels in and out was substantially less than it was in Jacksonville and is now in Jacksonville. We had almost concluded to locate the plant in Fernandina and buy that railroad, when we got into negotiations with the Atlantic Coast Line officials, Mr. Walters, Mr. Delano and Mr. Menzies and several more of them came down here, and we had conferences in Chicago. They at that time had a railroad running from Newberry to Perry which had three or four box cars leaving here in the morning and coming back in the morning; I think there was one engine on the railroad. All of that territory west from Live Oak almost to Tallahassee was controlled by this group of men—certainly all of the timber that was in it that amounted to anything. Very naturally, if they [fol. 789] had bought this Florida Railroad they would have made a heavier railroad out of it; and if they had gone into the operating business they would have not only dominated the—all of the outbound business, but they would have dominated all of the inbound business; there would have been absolutely nothing left of that railroad but between there and Perry. Of course, they realized that, and the railroad brought to our attention what is known as the Cummer scale was then in effect, and they thought we could afford to pay that rate rather than build that railroad. We told them, after we figured over it a good deal, that we probably could. Our railroad practically paralleled that for a distance of sixty or seventy-five miles. This other railroad was in the process of being wrecked and could have been bought for almost a song. And we finally agreed with the Coast Line if they would publish that rate and furnish certain equipment in the way of log cars that we would consider it. We picked out several locations between Jacksonville and the mouth of the St. Johns river, and Mr. Walters came down here and we made a trip on a tug boat down the river and showed him two or three pieces of prop-

erty that we had under option; and we finally purchased the property that is now known as Eastport; the Coast Line agreed with us they would extend that line to Eastport. They drew our attention to the fact that that would mean the construction of two steel draw-bridges across navigable streams; but in any event they induced us to build that plant at Eastport and agreeing to extend the line out there. [fol. 790] We were faced then with a problem of a big investment and a lot of interest and taxes going on, and we couldn't wait for the Coast Line to build that railroad and put in the two steel draw-bridges and get the War Department permits and all of the red tape it was necessary to go through with. In the meantime we had been dickering with the Seaboard Air Line. So we finally made an agreement with the Atlantic Coast Line that we would pay for the construction of a railroad from their main line into the plant, in consideration of this inbound material. But in consideration of the inbound tonnage that they would get, they finally paid for most of it; but our contract with the Coast Line provided they would have all of the inbound and outbound tonnage, everything being equal as to freight rates and service. There was a written contract on that subject with the Carpenter-O'Brien people as to everything except as to rates, I think. I have not a copy of that contract now. It may be in the files of the Brooks-Scanlon Corporation. I might make another—elaborate on that statement just a little bit in this way: That another controlling factor about our failure to buy and operate that railroad was the fact that Mr. Walters was substantially in both of those companies and who owed large sums of money, the McNair & Wade Lumber Company and the Southern Timber & Naval Stores Company; and he said he didn't want to see that tonnage get away from the Atlantic Coast Line. And that fact had some bearing with [fol. 791] us. We owned them a great deal of money at that time and so he gave some consideration to that phase of it.

"Q. Were you given any assurance, at that time or afterwards, with respect to the permanency of this rate, the Cummer scale, as to its remunerative character?"

"A. Only this: Mr. Walters assured us, as did Mr. Brand and Mr. Menzies and Mr. Delano, that they would take care of that situation out there, that they were not making

freight rates, but that they would always find a way to take care of that railroad that we located there."

The Putnam Lumber Company started sawing pine lumber on the 1st of January, 1919. After we had leased the Cummer Lumber Company's plant at Milldale, if my memory serves me right, we started in 1923, after we purchased the McGinn Company plant in the other end of Jacksonville, we were sawing about seventy-five million feet a year. About forty to forty-five million of pine, and thirty to thirty-five million of cypress; it varied; some years when the market is not right we don't produce as much. We are operating under the so-called Cummer log rate scale at both the Ortega plant—the old McGinn Lumber Company plant —and the Milldale plant (Tes. pp. 589-590). The number of trainloads of logs per week that we take and that are delivered to us varies. We have the night run-off at both the plants now; we are not operating except at day time at each one of the plants. We have got a yard full of lumber and can't sell it and so we have restricted the output. Under normal conditions we usually take six train loads per week when we are operating to capacity. We are now taking five or six and still are, but we have to run forty-car trains; and these other fellows operate under a thirty-car [fol. 792] minimum.

They deliver us the empties there in train loads about five o'clock in the morning, take them down into our terminals and the engine and caboose are cut loose from them. We take hold of those cars and take them to the woods and load up the cars and bring them back; and they put the engine on one end and the caboose on the other, and they take them on to Jacksonville (Tes. 5.591). We do not get any logs in other than train loads. The movement occurs at night. We usually leave the camp at seven or eight o'clock at night and get into Jacksonville about five o'clock in the morning. A complete turn-around would be about 48 hours, although that is not on all of the equipment. We have something like 170 cars in our service, and naturally it takes—there are more or less "bad orders," and we are sometimes late in getting them unloaded, and the trains are sometimes late with them, and those extra cars are put in that service to take up the slack. The normal turn-around is 48 hours. The Cummer scale rate to Milldale when we

first started operating out here at Brooks-Scanlon was $12 per car, fifty thousand pounds to the car, excess in proportion and the rate now is $17. The increase has not been all at once, if I recall it right, there were three advances and one decrease. That advance was made during the war, part of it was taken off, so that the rate today is $17 as against $12 when we started operating in 1913. We have had operating contracts on behalf of the Putnam Lum- [fol. 793] ber Company with the Atlantic Coast Line Railroad. The first contract was made I think in 1918. That was during the Government administration, I think it was. This appears to be a copy of the contract.

(Whereupon Intervenors' Exhibit No. 33, witness Fleishel, was marked for identification. Tes. p. 592.)

(Exhibit No. 34 was marked for identification as an exhibit, with a letter on the first page.)

(Exhibit No. 35 was marked for identification.)

The Witness (continuing): We made a subsequent contract with the Coast Line in 1923, I think it was, covering the movement of cars from Cross City. The original contract was made covering the movement from Clara, Florida. The second contract was made to eventually succeed the first one, but they were both operating at one time for about a year. The latter one is operating now and was made in 1923. Exhibit No. 34 appears to be a copy of a 1923 contract. (Tes. pp. 593-594). I identify the explanatory letter on there, which is signed by Mr. A. H. Page.

I have prepared a statement showing the approximate amount of our timber holdings as of December 31st, showing likewise the approximate present book value of our investment, and likewise the approximate number of men on the payroll, showing likewise the pine and cypress logs shipped from Clara and from Cross City. This seems to be the exhibit marked No. 35.

"Examiner Brown: These three documents will be received as Intervenors' Exhibits Nos. 33 to 35, inclusive" (Tes. p. 595).

[fol. 794] The Witness: Practically always the ordinary load on a car shipped from the points of origin to our mill exceeds the minimum of 50,000 pounds by about 25 to 30

per cent. The amount paid by us is in proportion. It is the basis of 50,000 pounds per car, excess in proportion. I have been engaged in the lumber business in Florida about 14 years and am acquainted with various timber holdings throughout the northern and eastern part of the State of Florida. It is and has been a part of my business to keep up with matters of that character (Tes. p. 595). We have bought some virgin timber since the original stand was acquired by the Putnam Lumber Company in recent years. Whenever we could buy timber at a moderate price, well located, we have ordinarily bought it to keep our plants in operation if it was anywheres near tributary to our other holdings. I was present at the Valdosta hearings and I have been present throughout the examination of the witnesses at this hearing.

"(By Mr. Adair:)

"Q. Mr. Fleishel, based upon your own knowledge, can you say whether or not there are available for sale to, or purchase by, Georgia operators, any merchantable tracts of timber within 150 miles of the Georgia boundary line—the Georgia-Florida boundary line?"

"A. Well, if you mean by merchantable tract of timber anything more than for a little ground sawmill, I would say absolutely no."

"Q. What sized timber tracts would you include in merchantable then?" (Tes. p. 596.)

[fol. 795] "A. Anywhere from six or seven million feet up."

The basis for that statement is that I think I have been practically over every county in north Florida in the fourteen years I have been here; I did nothing else for the first few years I was here, looking at the timber with a bunch of timber cruisers, looking for first class timber. There is merchantable timber within 150 miles of the Georgia line, but it is not available for sale to or purchase by Georgia mill operators because it is already owned by these saw mill operators who have big investments in saw mill properties before. By big investments in saw mill properties I mean going saw mills involving large sums of money. It is wholly inpracticable to log and ship those small tracts—

ship the timber from those small tracts, to Georgia points, there to be sawed, except where the timber is lying practically alongside of the railroad. The reason is because you can't afford to build a railroad out there into that kind of country that will carry these main line cars. If you have ten to fifteen million feet of timber, you can't afford to build a railroad out there, you can't ship these logs if you build a railroad out there, unless you have enough timber to justify you in building a railroad (Tes. p. 598). As to whether or not there are located along the Atlantic Coast Line Railroad within 150 miles of the Georgia line any tracts of six or seven million feet of timber that are so located as that it would not require logging roads to log [fol. 796] them, that is not now owned by present operating companies, I don't think there is a one. When I spoke a few minutes ago of the large investments in saw mill properties I meant operating in Florida. As a practical matter, it is absolutely impossible for an operator of a saw mill at a Georgia point to acquire and ship logs from Florida to Georgia, or even on the so-called Cummer scale, if that scale were made applicable to interstate commerce. I am entirely sure of it. Because, in the first place, it is the most impracticable thing in the world. You are taking the lumber right away from the point where it is worth more money to begin with. Lumber is worth more money in Florida than in Georgia. Timber is worth more money in Florida than it is in Georgia, by reason of its location to tidewater, and by reason of the outlet of, and the consuming territory of Florida, where it is nearer to consuming centers, as well as outbound water freights. There would not be any timber available for purchase by those Georgia operators, in merchantable tracts, unless they purchased at a price large enough to justify some sawmill man in selling his timber. The effect on the logging cost would be reflected in the price of the timber, and the price at the mill. We are having a hard enough time to meet the competition of the Pacific Coast Shippers now without that added cost in our production (Tes. p. 599).

"Q. How under present latter day logging and saw mill conditions are small isolated tracts of timber logged and milled, if at all?"

[fol. 797] "A. Well, it is only done by tractors for a very short distance, and they move the saw mills to where the timber is."

There are such things as portable mills. Small isolated tracts are ordinarily cut with portable mills, always. There are other methods of logging and milling small isolated tracts so as to come out on the operation. During the last few years, with the construction of these hard roads all over south Georgia and Florida, a good many of the fellows that operate these small mills have been able to haul their logs farther than they used to; as long as they had the public to keep up the roads, they could haul the logs over four or five miles of hard roads cheaper than they could over a railroad or over one mile of cheap road; but the principal milling of timber is through little small mills, because the little small mill, unless he owns a big tract of timber, certainly cannot afford to build and operate a railroad (Tes. p. 600).

There is no competition of ours at all between mills located at Valdosta and Climax, Georgia, and the mills located on tidewater in Florida. We sold our timbers and heavy planks to the eastern seaboard territory, we exported more or less of it. We sold our side board, such as flooring, ceiling and siding, largely in Florida, and a little in south Georgia. When I say on the eastern seaboard I mean the territory Baltimore to Portland, Maine. That is the port cities of the east practically entirely. We can't compete with the mills in Mississippi and Louisiana when we get back from the seaboard—yes, with the seaboard cities. We [fol. 798] do absolutely no business in the Middle West and under normal conditions we don't even attempt it any more (Tes. p. 601). As to what difference there is in rates, between the water rate from Jacksonville and the other tidewater cities to the cities on the north Atlantic Coast that I have named, and the rates by rail, that is, to like places, from Valdosta, Climax and other south Georgia towns in their general vicinity, the all-rail rates are substantially the same. What are known as Georgia main line points are practically the same as Jacksonville; I think we have one cent advantage to a few points. As to the cost per thousand feet, transporting the lumber by

water from Jacksonville to ports on the north Atlantic Coast and the cost of transporting the lumber by rail from Valdosta, Climax and like points, on lumber, on yellow pine lumber, it costs us about nine dollars per thousand to deliver it up there; and if we paid the all-rail rate from Valdosta or Climax, it would cost us twenty-two dollars a thousand. Because of the outgoing rate they are excluded from those markets and we never hear of them any more than if they were not on the face of the earth (Tes. p. 602). As a matter of fact, from our experience in operating large saw mills in and near by Jacksonville for the last fourteen years, we have never encountered any competition from any lumber man either at Valdosta or at Climax or in that neighborhood, except in South Florida on the side boards, but not on timber, not on the kind of lumber we [fol. 799] ship to the eastern seaboard; no. We ship all the boards we make with the exception of what is exported to south Florida.

"Q. What competition do you encounter down there on side boards?"

"A. During the war we did not hear of them. A good many of the Georgia mills were shipping it down there, and they were shipping it to Texas and Louisiana. That was a very abnormal condition."

Under normal or ordinary conditions, they can and do attempt to compete in south Florida in this business on side boards, with their little, cheap, trashy roofers; but then, of course, that is a very low grade of lumber, or they don't have an outlet for it elsewhere. Roofers is practically all. Oh, you couldn't afford to pay main line freight on logs to make roofers out of them; no, sir, because you only get about $18 for the lumber to start with, after it is finished and dressed and dried and sawed (Tes. p. 604). Some fellow may cut a few logs because he has a saw mill that has cut out the timber, or something like that, and he may swap dollars to extend the life of his saw mill for two or three months on an investment that is already made; but as a practical proposition it is unthinkable. There is not any material competition anywhere, absolutely none, either in the East where these gentlemen testified—or rather points east of the Ohio River is the way I believe they put

it—they sell their principal output in competition between us or the other mills on tidewater and these plants located there in south Georgia.

The 190,000,000 feet located at some location which was [fol. 800] referred to is known as the Montague tract. It has also been referred to as the Epinger and Russell tract. I know it by both names. Yes, I have been over every acre of it. That particular tract of timber is 168 miles from Valdosta along the Atlantic Coast Line Railroad. It would have to move over three branches of the Coast Line to get there then—three different divisions. That particular tract is 52 miles from Jacksonville. In fact, it starts 46 miles. If we suppose that this Cummer rate then were made applicable to interstate commerce as well as intrastate, the difference in the log rate on that basis between the shipment of that lumber to Jacksonville and the shipment of that lumber to Valdosta would be that it would move into Jacksonville on a rate of eight dollars and a half a car of seventy-five thousand pounds; to Valdosta it would be nineteen dollars, but the big point is that the lumber produced out of that timber would be worth five or six dollars a thousand more on Jacksonville market than it would on Valdosta, because it would be on tidewater. The finished [fol. 801] product we could get would be worth five or six dollars more per thousand at Jacksonville than at Valdosta or any interior point (Tes. pp. 605-606). I know that that tract has been recently sold. It was bought by Goethe Brothers. They operated a saw mill right alongside of this tract of timber ten years at Manning, on the Coast Line. The next preceding ten years, yes sir; and they had another saw mill on the north end of the timber that has been operating right immediatealy adjoining this timber for the last ten or twelve years. My understanding is that they paid about one million eight hundred thousand for that land and timber. That is my understanding; I don't know that to be true. That is what they were asking for it (Tes. pp. 606-607). I have been over the property. The best timber has been cut out of it; it is what is known as cut-over timber; there are two or three big trees lying there along the branch that are too expensive to log. That property has been on the market constantly during recent years and it has been offered by every real estate man from Wash-

ington to Houston, Texas. Brooks-Scanlon looked at it and I looked at it and two or three others looked at it but none of us bought it. That was long before the Valdosta hearing. I think the timber was sold when the Valdosta hearing took place (Tes. p. 607). It was long before this suit started that I looked at it once three years ago, and I looked at it about a year ago, and I think Brooks-Scanlon looked at it about two years ago. All of that was long before this action was ever commenced or was ever heard of. The purchaser of [fol. 802] this property has no connection in any way, shape or form with any of the intervenors in this case. I know he has not. It has not been suggested by any intervenor that he buy the property. Operating as he was, on two sides of the property, he was the logical customer for the property, and he moved his mill down there 15 miles rather than pay a 15-mile freight on it (Tes. p. 608). If there be a desirable tract of 190 million feet of timber the size of mill that would have to be constructed to cut it would, in my opinion, be anywhere from 100 to 150 thousand feet a day. Six per cent on the purchase price of it would be four or five dollars per thousand on that capacity, per year. Such a mill would cost half a million dollars to construct. Then Mr. Jackson, who testified in Valdosta, would have had to put up something like a million eight hundred thousand dollars for the timber, and apart from that, at least half a million for a mill to cut it. That is a modest statement about the plant investment (Tes. p. 609). I understood Mr. Jackson's testimony in Valdosta to be that he had a little bit of a mill up there now. As to whether it would be within the bounds of reason for him to have cut any such tract as 190 million feet with that little mill that he had in Valdosta, he would have to have four or five like that, or six. And if you assume only an annual cut of nineteen million it would take fifteen years to do that and he would have a fifteen to twenty dollar a thousand overhead cost on that mill. Therefore it is preposterous for a man assuming to do any such thing. It is utter-[fol. 803] ly ridiculous, in my opinion I have been in the lumber business about thirty-one or two years. As a matter of fact, it is my life work. I have never done anything else. As to whether or not I believe that if any of these gentlemen on tidewater had this thing to do over again now they

would locate their mills on tidewater, or they would take their punishment and go to the woods, I think I can answer that best by telling you that I am moving mine to the woods now notwithstanding the loss that will accrue by virtue of the removal of my cypress mill. It will cost us a million and a half dollars to move to the woods. Over the period of the last several years several new mills have been built in Florida. One built at Lake Wales, Florida; one at Seers; one at Sherman, Florida; another at Holopaw, Florida—all large mills (Tes. p. 611). All of those mills have been built at the timber. There is no point in building at tidewater any more. The only justification for maintaining these mills at tidewater is the tremendous investment they have got. The loss in our operations is overcome by some advantage in the water rate, and that is the only excuse in the world, is your outbound water freight. Your outbound shipping weight of lumber is only 40 per cent of your inbound weight. The tidewater mill is moving in the general direction that the finished product will take when it is manufactured. These mills that have been built in Florida in the last five [fol. 804] years have every one been built interior, and built on the Atlantic Coast Line Railroad when they had the advantage of this Cummer scale, nad still would not use it. They found it more economical to go to the woods. Sure; there is no question about that (Tes. p. 612). As to whether or not, knowing as I do the timber situation in northern Florida, it is possible for any material amount of logs to move in interstate commerce from Florida points to Georgia points on the Atlantic Coast Line Railroad, even if the Cummer scale were made effective in interstate commerce, I don't think that there would be 200 cars a year moved if you make it half of the Cummer scale. There would be no material amount of it moved if the Cummer scale itself were put in. I know there would not.

It is perfectly satisfactory to make a rate of a dollar on a car on the Atlantic Coast Line to Georgia from Florida. It would not make any difference in the conduct of our business, not anything. They can make a rate of a dollar a [fol. 805] car so far as I am concerned. If I might make a general statement about a proposition, I would be glad to do it.

Your Honor, as I understand it, the question at issue here is the question of an interstate rate on logs from Florida into Georgia. I have been in this territory for fourteen years, and I think I know as well as any man the possible sources of any timber in north Florida within, say, a radius of one hundred and fifty miles south of the Georgia line. It is a perfectly silly thing to talk about logs moving from Florida into Georgia, on account of the rate, even the present Cummer rate that is talked so much about. The timber is not there. It is owned by large lumber companies who have already got their companies highly organized to take advantage of the logging. These little biscuit-cutters up in Georgia that use big, thick circular saws and cut lots of lumber, get less lumber out of a round log than these big band mills do, and they get several dollars a thousand less for their timber; and it is unthinkable to me that all of the time of the public should be taken up with the discussion of a question of this kind. I don't think there is any basis for it at all. There is some underlying motive other than appears on the surface. In the southeastern area of the United States it is a more or less general condition that these small mills have found their sources of timber about exhausted. They are moving their mills or going out of business. I will tell you something about the [fol. 806] commodity which has been referred to at this hearing called "Roofers." It is a piece of lumber, usually one by six and sometimes one by eight inches wide, occasionally one by ten inches wide, that is usually air dried and very knotty, and is used for the outside sheeting of a house —or rather, the inside sheeting on which the outside boards are nailed. It is the cheapest lumber that a saw mill produces, outside of culls, and it is used for sheeting almost entirely. And the larger mills, as a rule, don't make that kind of lumber, to that extent. I would say that ninety per cent of the lumber being produced in south Georgia today is of that type (Tes. p. 615). As to why the statistics contained in my Exhibit No. 35 are as of December 31st, 1925, that particular day, to be perfectly frank with you, my auditor got it up by request of these attorneys in this case, and I know nothing about it other than these figures were taken off the books. The fact is, when these figures

were gotten up, 1926 was not ended and we could not have given it to you for the full year. We don't make any half-yearly computations but we can get it for you by the month. No substantial changes since December, 1925, only this, we produced less since last year because we have not been running at night for the last few months. Otherwise outside of a few million feet produced the assets are practi-[fol. 807] cally the same. I wouldn't say that the capital assets had changed at all. The figure of 1,099,000,968 is feet; yes, sir. On page 2 of my exhibit, with reference to cypress logs shipped out by the Putnam Lumber Company to Ortega, Florida, I have omitted the number of cars and the average per car for the number of years, but I could not tell you what the significance of that omission is. Personally I had nothing to do with compiling this statement. We can supply it. There is no significance to it. We have been doing more or less logging on the river there, and we are not able to make a statement. I guess that is the answer to it. We get more or less logs out of the river that are not hauled by rail, and we would not know how much of this weight was involved per car. And I imagine that was the reason we did it. Both the pine logs and the cypress logs were carried by the Atlantic Coast Line Railroad, all those that came by rail. Not on our private tracks. We get some from the Seaboard. It shows the amount, in dollars, and I imagine those "feet" are supposed to represent total feet, although I am not positive (Tes. p. 617).

In regard to moving our tidewater plant to the woods, we don't own any properties on tidewater. We have got them under a very favorable lease, a good deal less than one per cent of the value of the dirt alone. We are moving them because we can't pay the Cummer scale log rate. We are moving them 125 miles to Jacksonville. We are moving [fol. 808] them out near Cross City, Florida. That is right in the timber.

Cross-examination.

(By Mr. Perry:)

The approximate maximum distance that we haul logs now is 120 miles (Tes. p. 618).

"Q. Where is this $17 rate, what is the distance, and what point does it move from that you spoke of?"

"A. We don't pay that; we pay $16."

The rate was increased from twelve to seventeen dollars for delivering them over the old Brooks-Scanlon trestle, which was a longer haul. We pay $16 between Cross City, Florida, and Jacksonville. It is within the 120 mile bracket. It is just a mile or two less. There are other lumber mills on the Atlantic Coast Line Railroad between Jacksonville and Newberry, and between Dupont and Perry, Florida. There is a saw mill that is just below Lake Butler on this tract of timber that we were talking about here, of Goethe Brothers. I think that is the only saw mill there is between Jacksonville and Newberry; and there was a little "ground rattler" mill between Dupont and Newberry, but I think that is done. There are none between Dupont and Perry unless it is some little two by four outfit or that is there temporarily; there are one or two little ground rattlers at O'Brien, Florida (Tes. p. 619). There used to be a cypress [fol. 809] mill at Jasper, Florida. I don't think there is any mill there now. I do not know; I have not paid any attention to it lately. I know that the company that was operating there quit, but I don't know whether they ever started up again or not. At Live Oak there is a little portable saw mill that was making more out of the slabs for the city than by lumber. Of a capacity of about seven or eight thousand per day. This location I referred to as between Jacksonville and Perry on the Atlantic Coast Line is the outfit that bought this 190 million feet. That has been operating at Manning heretofore, a little closer in, or a little further down rather. The capacity of the mill that bought this 190 million feet, I would say they have one mill on the Seaboard that is cutting twenty-five or thirty thousand feet a day of lumber, and the other I imagine is cutting thirty or forty. They said they were going to build two mills. They built one, which is unfinished, and then they have a small mill running there in addition. It is about the same size and capacity as Jackson Brothers mill at Valdosta. I am only acquainted with the Jackson Brothers plant by hearsay. I think it is a circular mill; I am not sure. I don't recall that I did hear Mr. Jackson testify

yesterday that it was a band mill. If he testified to this I would accept it as correct. I am well acquainted with the facilities in Georgia and the operations up there; I have had opportunity to gather that impression that is satisfac- [fol. 810] tory to my mind, and I was largely familiar with the capacity and operations of these enterprises generally in south Georgia (Tes. p. 621). I have never been out to the Jackson Brothers Mill. I know something about the Waycross enterprise. My recollection is it is a circular. Its capacity I judge would be about 20 or 25 thousand. That mill at Albany is a band mill. There is no reason whatever why they can't cut lumber as cheap as we can with a band mill. As to whether I was not mistaken a while ago when I undertook to compare the comparative cost in Georgia with Florida, if these "ground rattlers" do not have modern machinery, I was not mistaken. I did not speak of that as a ground rattler mill. I spoke of the handicap because they did not have band mills, but you are talking about a mill now that is a first-class mill at Albany that is cutting cypress and hardwood lumber; and it is the only hardwood lumber mill in south Georgia; and I think I know most of them. There was one at Waycross, but they walked out and quit; they just walked clean away (Tes. p. 622). I would say that Jackson Brothers mill bordered very closely on being a ground rattler. I haven't had any actual experience in operating ground rattlers or small mills for several years. I am operating one right now to saw some timbers for this new plant of ours. I have operated some mills all the way from the rattlingest bound rattler there is up to the biggest ones. At one time I had eight or ten of these small or portable mills, with an output of anywhere from five to ten thousand feet a day. That was years ago when conditions were somewhat different [fol. 811] from what they are now. I have not operated any except this little mill I have now (Tes. p. 623). I am not familiar with the output of the plant of the Bray Lumber Company at Valdosta. I have never been to the plant of that Company. I have been by there when we were there at the hearing. I would say the capacity is 25 or 30 thousand feet; maybe 35; I have operated a plant of that size when I was in the small mill operation. But I do not class that as a ground rattler, or small to fair. I spoke of the

Georgia mills as small mills or ground rattlers. Ninety per cent of them are ground rattlers (Tes. p. 624). There are just something like ten per cent up in the grown men's class; I would think that is true (Tes. p. 624). If there were a band mill at Valdosta that cuts fifty thousand feet of lumber a day, I would consider a mill of that proportion of some importance in matters of rate adjustment with regard to their just right to compete in competitive territory, yes, sir; I think the little fellow is entitled to as much right as the big one.

"Q. Sure. Then there is in Georgia lumber manufacturers of sufficient importance to justify their consideration as a mill that is entitled to compete wherever their business carries them, in the drawing of logs, or, of course, in the sale of their products? That is true as to Georgia then?

"A. If he has got a saw mill and he wants to draw logs he is entitled to some consideration."

"Q. Yes, sir. Now, you stated before noon that so far as the Georgia manufacturer is concerned, your business is of such proportion as to make it impossible for you to know why they exist insofar as competition is concerned?

"A. I didn't say that.

"Q. I thought you said you didn't know they were on the face of the earth, before dinner?

[fol. 812] "A. I said so far as competition is concerned.

"Q. That is what I said."

"A. Yes, sir; but we don't ship lumber to the same territory via the same routes."

"Q. I don't mean you disparage the amount of business they do, but you don't know them in the business so far as competitive conditions are concerned?"

"A. Yes, I know Reynolds Brothers very well."

They compete with us, on cypress in a small way, but not pine. Because cypress is a very light wood and it is practically all dressed, and yellow pine timbers are very heavy, and are usually shipped rough, and we have such an advantage over them in the outbound rate from tidewater that if they were shipping outbound lumber they couldn't compete with us. If they had the opportunity to draw cypress logs from Florida on a rate similar to that of ours, distance, of course, considered, I don't think they would

be in a better position to compete with us than they are now, because I don't think there is any cypress commercial timber they could buy. I know practically there is not. There may be a few trees here or there, but you can't market it like you can pine. You have got to have heavy equipment, big skidders—and you have to have a heavy railroad to carry it, you can't skid cypress logs like you do small logs. As to whether the supplying of cypress to small mills is different from what it was years ago, that is so only when you use trucks. It is feasible to use trucks when drawing logs for transportation, rather than railroad, up to a distance of three or four or five miles, at times, but I [fol. 813] would think not further than that. If there is any cypress timber on the Monticello Division of the Atlantic Coast Line in Florida it is in very small quantities and very spotted. Broadly speaking, there is no cypress timber on that area. I speak from knowledge. We looked at timber at a little mill on the South Georgia Railroad. Speaking of the Coast Line only, I made that trip across there several times, and I never saw or heard of any timber that I would call cypress timber. There may be four or five trees standing around here and there; but in the lumber business we don't speak of that as timber. I do not know whether Reynolds is drawing any of that timber from Florida now.

"Q. Now, as to competition: You say, relatively speaking, you do not feel the competition of the smaller mill. Isn't it true as to the output of your plant that the little mill does feel the competition of the larger mill?"

"A. No sir. I know that because those mills in Georgia are not making the same kind of lumber that we are at all."

"Q. You mean the cypress mills?"

"A. The pine mills."

"Q. The cypress mill at Albany?"

"A. They cut hardwood and cypress both; but we don't cut any hardwood."

If he were placed on a competitive basis he could increase his business, if he could get any timber, if he were small enough to sell it, and we aren't smart enough to sell ours. I would not say that the freight rate enters into the drawing of logs, naturally, so far as drawing logs into Florida from

Georgia is concerned. That is on the assumption that I know the location of all the cypress timber in Florida on [fol. 814] the Atlantic Coast Line Railroad and I think I do.

We are dismantling certain portions of our property, to the amount of about one million five hundred thousand dollars, and moving it from tidewater to the woods, because the economy of the thing appeals to us and causes us to do that, and certainly for no other reason whatever. One of these plants is only three years old and it has got fifteen years yet to run.

The so-called Cummer log rates in Florida are not of such a nature as to make them especially desirable where you have to draw your logs one hundred and twenty or thirty or fo-ty miles. They are too high, and for that reason we are going to the woods, and for the reason we have our weight net going to tidewater when we get out there. On forty per cent we get nothing back for, on this haul. Your advances on freight rates that have been taking place on sixty per cent of the weight of the timber or the log that have no place in lumber. The extension of the Cummer scale into Georgia would not interfere with our operations. It would not interfere in the slightest. As to whether, if at Valdosta, Georgia, there is a plant of fifty thousand daily capacity, and he ships his lumber to the East and we ship ours to the East, that plant at Valdosta is not under a handicap in meeting this competition with us where we both compete at the same place, by reason of having to pay a higher freight rate than we pay, because he does not make the same kind of lumber we do. He has got a flooring outfit out there where he cuts his lumber practically into [fol. 815] one-inch lumber. We ship timbers and plants to the East; timbers of two or three inches and any width, say six inches and up. Now Mr. Jackson tries to make flooring. We don't ship a foot of our flooring up into the territory that he claims to ship in. I don't think that the output of the Bray Lumber Company finds a market in the same territory. They sell most of theirs to the railroads that are right there, I understand; they don't ship the same people we do; they could not do it because we have ten or twelve dollars a thousand advantage over them."

"Q. Well, now, the real picture, Mr. Fleishel, is this; that there is a business in Georgia, the same line of business to

a degree that you are in; they have the same type of machinery that you have; but smaller, that is, band mills, that manufacture to some degree the same kind of timber that you manufacture; and their output finds its market in the same territory that yours does?"

"A. You are ass-ming that?"

"Q. Isn't that true?"

"A. I don't think it is."

"Q. Well, I understand that you shipped yours to the east?"

"A. True."

"Q. Mr. Jackson testifies that he shipped his to the east?"

"A. I don't think he testified that he shipped that kind of lumber to the east."

"Q. And Mr. Giddens testified that he shipped his to the east?"

"A. That kind of lumber?"

"Q. Yes, sir; that is my recollection of his testimony, as to where he found a market."

[fol. 816] "A. Possibly he did."

"Q. So if that is true, there is no reason why they shouldn't have the same freight rate as accorded their competitors in Florida, including your business among the number, is there?"

"Mr. Adair: Mr. Examiner, we want to be liberal and courteous; but it seems to me when they ask this lumber man here to testify upon the rights and reasons surrounding the making of a freight rate, that is going too far afield and getting into a realm where I, a lawyer, would hestitate to express an opinion. I object to the question on that account."

[fol. 817] "Mr Perry: I don't think, if your Honor please, that it is an opinion at all. He is testifying as to the facts. He qualified by saying that he knew about the Georgia business similar to that."

"Mr. Cotterill: I assume your Honor will not require the witnesses to answer without qualifications what the rights of anybody are."

"Exam. Brown: The last question seemed to call for a conclusion, Mr. Perry."

"Mr. Perry: The question was, your Honor, as to whether or not he knew of any reason why they should not have the same freight rates into Georgia, if he has reasons for it. It is not a question of conclusion. If he has got reasons why they should not have that rate, why, he should say so."

"Mr. Cotterill: If your Honor please, the witness has not indicated on direct-examination that he objects in the least measure to the Florida rate being established in Georgia the same as between Florida and Georgia."

"Mr. Perry: I appreciate it; and he stated if it was a dollar a car."

"Mr. Cotterill: And his having said he does not object to it, I cannot understand the object as to why shouldn't it be."

"Mr. Perry: His reasons why it should not be extended into Georgia is what I want to know."

"Exam. Brown: If he wants to state any reasons on that subject, I will permit it for what it is worth."

I do not know of any reason why the Florida log rate should not be established from Florida to Georgia (Tes. p. 634). As to the increases in log rates from twelve to seventeen dollars a car, I did not try to create any impression at all. I was asked what rates we paid in the be- [fol. 818] ginning, and I said twelve dollars a car; and I was asked what rate we were paying today, and I said seventeen dollars a car, and qualified that by saying that part of the advance which took place during the war period was afterwards reduced; but the horizontal advances that have taken place in these rates since operations was from twelve dollars a car to seventeen dollars a car. I think they were general advances in all log rates, that is, on the Coast Line; I don't recall whether they took place on the other lines or not, and if the log rates on the Coast Line were below the general or normal basis of rates, and if those rates were made on a percentage basis, the amount of our increase in rates was relatively less than the amount of the increase in the normal or general level of the rates, that is a matter of mathematical calculation; but I should think so.

Redirect examination.

(By Mr Adair:)

I spoke of the advantage of ten or twelve dollars on timbers and planks over the interior Georgia manufacturer. I meant, I was referring to the advantage in the water rate. I think it is clear in the record, because I stated that the present cost of hauling lumber by water to the consuming centers at the eastern seaboard cities was about nine dollars per thousand, and the all-rail rate from Georgia main line points would make a cost of anywhere from twenty-two to twenty-five dollars a thousand for the transportation of the same unit of lumber. Our market in the east is confined to the coast cities. The principal competi- [fol. 819] tion that comes in and has come in during the last two or three years has been almost wholly out of the Gulf by steamer and sail to those same points, and from the Pacific Coast. The worst competition we have encountered is the Pacific Coast. It has been going on and steadily increasing for the past five years. Five years ago it was about three million feet that passed through the Panama Canal. In 1926 it was two billion feet, and there has been a substantial increase every year. That is water borne lumber; they have been putting it through there for the eastern seaboard ports for twelve or fourteen dollars per thousand freight measure—that means rough lumber. And the freight from Georgia main line points or from Jacksonville by rail would be anywhere from twenty to twenty-five dollars a thousand. Of course, their lumber is lighter than ours; that makes some of the difference (Tes. p. 637). I am sorry to say the fellows on the Pacific Coast make the market in the eastern cities now, and we are required to meet that. I can't conceive of a Georgia interior man marketing his timber in the East. He can sell every foot of his timber in other territory, and these railroads pay as much out in the woods as they do at their own stations if their own rails reach there.

In speaking of the contract, I meant I had no written contract fixing rates. As to whether I had no rights, moral or legal, under the representations that were made to me by the Atlantic Coast Line officials, I don't know. We have [fol. 820] not been able to enforce them in any way. We

have always felt that the moral obligation was there. When that body of timber was put together, those four or five big groups, and we were induced not to build our own railroad, which we would have been thoroughly justified in doing, we felt like those logs ought to have been continued to be hauled at the lowest cost to haul them. They have told us that in the beginning, but I don't know whether they have told us that since then or not.

We have felt this burden of the Pacific Coast competition in the southeastern coast cities only in Florida, at Tampa and Miami. It wasn't particularly burdensome at one time because there was more demand than there was lumber from all sources for a while, but neither ourselves nor those fellows are in business down there now.

As to whether these Georgia mill men should not have the same rate the Florida people have, well, I don't think it would do either the Georgia people any good or the Florida mill people any harm. I can't conceive of how it could help the Georgia mill men or hurt the Florida men. That is why I made the statement I was not interested in what rate the Atlantic Coast Line made on logs from Florida into Georgia (Tes. p. 639).

Recross-examination.

(By Mr. Perry:)

As to being unconcerned about the rate interstate Florida into Georgia, I do not know all about their business or [fol. 821] their markets; I don't claim to know it all, no. The statement that sixty per cent of the roofers manufactured were manufactured by the manufacturers of Philadelphia and New York in the east—if you are speaking now of the present conditions, is not true, only up to the last month or two. It is possibly more than sixty per cent. We don't ship any roofers up there. I don't think there is a roofer manufacturer in Florida or anywhere else shipping roofers to Philadelphia. If he does he ought to be put in an insane asylum. They ship them to Florida and Georgia. If the Florida manufacturers ship roofers into Georgia, they may come into competition with the Georgia manufacturers, probably so. We don't ship any there ourselves. I imagine some of them may ship roofers into

Georgia, although I don't know how they do. It is a very unnatural territory, to ship from Georgia into Florida, because lumber is worth more in Florida than in Georgia and the average south Florida mill cannot ship into Georgia. Well, ordinarily, Florida is a better market than the Georgia market. There is reason for the Georgia manufacturer wanting to ship into Florida sometimes, yes.

The water rate per hundred on lumber from Jacksonville to New York is nine dollars per thousand feet by the Clyde Line. It is stated per thousand feet, which weighs about five thousand pounds to a thousand.

I think our all-rail rate from Jacksonville is about 42 cents; I dont know; we don't ship any of it that way; it is about the same thing by water from Valdosta; it may be a cent more; we don't ship any lumber to New York be- [fol. 822] cause we go into the New England ports where the rail rate is higher and the water rate is no higher; for instance, Fall River and Providence, and Portland, Maine. We don't ship a foot to New York proper. We ship to Boston. The rate to Boston I think is 45 cents; I am not sure. I think the water rate is 9½ cents. We don't use that rate though. We ship in our own vessels and it don't cost us that. I think others use that rate out of Jacksonville, but our rate is not necessarily based on that, no. We figure on a transportation cost of our own vessels because it costs us more money to get it up to the steamer; we load our own vessels at our own docks. The shipper at Valdosta can ship on steamer. I don't know what the rate is on Valdosta via Jacksonville; I suppose it is about ten cents, or twelve; I suppose it is about 12 cents (Tes. p. 643).

The terminal charges at Jacksonville are about a dollar and a half per thousand feet. My impression is that the bulk of the Georgia lumber moves to eastern cities and interior eastern cities. The timbers, I said, do not go there, because you take Mr. Jackson in his testimony, he said he sold practically all of his lumber to the Norfolk & Western Railroad. Now, the reason he can do that is, the Norfolk & Western figure they get a certain division from the southern carriers; therefore, he gets the benefit of that. Now if he tried to ship lumber into Boston or New York or Portland, Maine, against our nine-dollar man, he would be lost, he would have twelve to fifteen dollars arbitrary to

[fol. 823] overcome. But he can sell to the Norfolk & Western Railroad, and the very reason he can sell to them is the very reason we cannot, because we pay rates to tidewater and gain an advantage on the through rate on lumber which is lower—just like the Atlantic Coast Line will pay as much money for lumber in Jacksonville as they will for lumber in Wilmington, North Carolina. That means a lot to the mill man. Outside of that railroad lumber, there is a decided movement to the eastern cities; that is, that moves in normal times up into that country. I would say ninety per cent of the pine lumber produced in Georgia is this roofer lumber. That portion of our lumber that is put into heavy plank and timbers altogether goes up to the east by water—that which we don't ship in export. We do quite a lot of export business. Our competition is in New England with the Pacific and Gulf mills. We don't ship a foot of lumber into that territory either by rail or water. That Pacific Coast lumber moves via the Panama Canal.

I am president of the Putnam Lumber Company (Tes. p. 645). That company commenced operations on the 1st of January, 1919. As to whether I felt I was under some moral contract obligation with the Atlantic Coast Line Railroad, I was coupling that, with the proposition that all of these properties were owned by the same men in the beginning. I was not confining that to the Putnam Lumber [fol. 824] Company's position at all, because in the beginning the president of the Putnam Lumber Company was president of all these other companies and it was treated as one proposition as a whole; and it was the intention, as I stated in the beginning of my testimony, that the purpose in the beginning was to have all of them in one corporation. And if we had bought and operated that railroad, why, that probably would have been done; but, for the reasons I explained to you, there were certain financial reasons on some of these properties that prevented putting them into one concrete whole. The only proposition that was entered into was with the Carpenter-O'Brien Company at that time. Before that time it was the Putnam Lumber Company. The only contract that dealt with rates was the Carpenter-O'Brien contract.

"Q. Was there or not a safety clause in that contract?"

"A. Yes, sir, subject to the rate making bodies approving what the rates were. Of course, we recognized the fact that the railroad could not make a contract that would indefinitely protect a fixed rate at that time."

"Q. And to the general effect, was it, that any order entered by any competent authority requiring the ceasing of that rate would not be considered a breach of the contract?"

"A. I don't think it was intended that that would be a breach of it, if they were not instrumental in helping break it down."

"Q. Anything in the contract or elsewhere about that?"

"A. I don't think there is, no" (Tes. p. 647).

Recross-examination.

(By Mr. Price:)

We manufacturers at Jacksonville do not have to pay this dollar and a half terminal charge because we have our own docks.

[fol. 825] You asked me the rate when it was shipped in from Valdosta, the Merchants & Miners, by steamer, out of here—they are the only ones that handle it that way. This dollar and a half a thousand terminal charge would not be incurred in the case of the two mills located here because they both have their own docks. There is a little mill out here running once in a while, cutting a little hardwood and a little cypress and a little pine, but I don't think they ship any cypress, they sell practically all of it locally (Tes. p. 648).

(Witness excused.)

W. C. Reeves was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Cassidy:)

My name is W. C. Reeves. I live at Thomasville, Georgia, and am a lumber inspector of the Southeastern Forest Products Association, formerly the Georgia-Florida Saw

Mill Association. I have been engaged in the lumber business practically 27 years and as inspector for the Association seven years. Prior to that time I was planing mill superintendent for various concerns. It is my duty in my present position to visit the mills who are members of this association and look through their stocks and report to the management if their manufacturing grades are not up to the standard. My duties require me to make frequent visits to mills located in the northern part of Florida and the southeastern part of Georgia, approximately once a month [fol. 826] (Tes. p. 649). I have an exhibit showing a list of saw and planing mills on the Atlantic Coast Line Railroad in the State of Georgia, as published in the issue of April, 1926, of the Atlantic Coast Line circular D-4593.

(Exhibit No. 36 of Intervenors, witness Reeves, was marked for identification.)

I prepared this list, this Exhibit No. 36. I have also prepared an exhibit from my personal inspection showing the actual number of mills located on the Atlantic Coast Line at the present time, and mills that are actually in operation at this time, which is shown in this next exhibit No. 37.

(Exhibit No 37, was marked for identification. Tes. pp. 650-651.)

In Exhibit 37, column 1, I show the average monthly production in board feet of these mills; and in column two I show the source of log supply; in column three, how these logs are procured, or rather the average mile haul by team or truck; in column four I show the amount of logs hauled and the average mile haul by a common carrier. As to how I arrived at the production shown in column number one, I visited the manufacturers and got this information either from the manager or his office or some financial agent of the concern (Tes. p. 651). The figures shown on this exhibit are approximately correct. There are no figures shown on exhibit No. 37 for Doctortown. I visited this plant but [fol. 827] could not secure the accurate figures. Mr. McKnight, the general manager, said he would not like to give out any information that was not exactly correct, and that they did not have the actual figures and it would take possibly a week to tabulate them. He did state, however, that the

principal production of the mill was the log forest production and was procured by water, via Altamaha River. That explains why I show 65 mills on the list and only 64 on the summary on page 5. Turning to page 5 of Exhibit No. 37 under the heading "Summary," I show under a column headed "Mills Logging Over Common Carrier" a production of 5,395,000 feet per month. On page 3 of this same exhibit under Quitman, Georgia, the production of the Barfield Lumber Company is shown as 800,000 feet which moved by common carrier and which is shown to move to mills over the South Georgia Railroad. This is included in the 5,395,000 feet. Barfield only moves one mile. On this particular page of my exhibit I show a total movement of 16,065,000 feet. The remainder of these logs are moved other than by common carrier by truck and by team and by water. Trucks, I should think, handle the greater amount of these logs. In another column of this summary I show an item of 660,000 feet in which there is no logging operation. This is the production of planing mills where they don't operate any saw mill and they buy their board supply from the small saw mill who doesn't operate a planing mill. In the sum- [fol. 828] mary I show an item of 60,000 feet as estimated. This is a mill that is now under construction, the Garrant Lumber Company at Argyle, Georgia. They are not yet operating and told me it would possibly be ninety days before they did operate, but they would maintain their own logging road, and this is an estimated production only. Taking this production of 800,000 feet which is shown to move only one mile over the South Georgia Railroad, and deducting that from the 5,395,000 feet, leaves 4,595,000 feet. This is the movement via common carrier to the Georgia mills of logs. All of the log movement via common carrier is not over the Atlantic Coast Line Railroad. A check of my exhibit will show that these log movements are over seven common carriers, exclusive of the 800,000 feet which moves the one mile over the South Georgia Railroad. On page 3 of my exhibit I show at Savannah, Georgia, an operation that moves logs a distance of 150 miles. I was informed by Mr. Wiggins, their office manager, that they did not operate a saw mill, and this 100,000 feet was high-grade hardwood logs for export only. The logs themselves are shipped as logs and not manufactured into lumber (pp. 652-654). I have prepared a map showing the mill points shown on Exhibit No. 37.

(The map was marked for identification as Intervenors' Exhibit No. 38, witness Reeves.)

The purpose of the map is to show the geographical location of the Atlantic Coast Line Railroad in Georgia, and [fol. 829] it is also to show the location of the mills along the Atlantic Coast Line Railroad, and included in that are some points such as Dupont, at which no mills are located, but are junction points. The map does not pretend to be drawn to scale. It is merely explanatory of Exhibit No. 37. The Enterprise Manufacturing Company at Waycross, Georgia, operates a planing mill only. No logging mill and [fol. 830] no saw mill at their plant. There is no saw mill at Waycross that I know of. There is another planing mill, but they don't operate log trains. They formerly depended upon getting their log supply from the Hebard Cypress Company and the Braganza Lumber Company. It is my information from Mr. Simmons that the Elberta Crate Company at Bainbridge do not operate a lumber plant. It is a crate mill. May be they haul some logs that are cut into blocks, but he told me that the principal source of their supply was the Flint River; in fact, they operate some barges of their own. It took me several days to make the check to see how many mills on the Atlantic Coast Line are in operation. I began on January 3rd and I was all of that week and Monday of the following week, I believe, in completing it. I made this trip in a Ford car. That was in January of this year. I made the inspection at the request of the intervenors in this case to get accurate information. My exhibit No. 37, the last column headed "By common carrier, average haul—miles"; by that I mean the railroad common carrier. That does not include water common carrier (Tes. p. 657). In the figures shown in that column there is no water haul. I secured this information in person through contact with the managers and operatives of these mills and their financial agents. I might explain what I mean by financial agent. In the case where there is a planing mill being operated that doesn't operate a saw mill, they sometimes finance a man with a saw mill and take the [fol. 831] output of his mill; and in that case I could get more accurate information from the planing man than I

could from the saw mill man as to what his average cut was.

(Intervenors' Exhibits Nos. 36 to 38, inclusive, were thereupon received in evidence.)

Cross-examination.

(By Mr. Perry:)

I have been in this business as an inspector for seven years (Tes. p. 658). I have been in the lumber business possibly 20 years prior to my connection with the association. I was at various places, with the Jackson Lumber Company at Lockhart, Alabama, one; the Smitherman Lumber Company at Chapman, Alabama. I was not in the saw mill business in Georgia but I was with W. D. Harrison Lumber Company once at Defuniak Springs. That is the extent of my lumber experience. I was never in the lumber businesss for myself. The purpose of Exhibit No. 37 is to show as nearly as possible all of the saw mills operating along the Atlantic Coast Line Railroad in the State of Georgia, and I got this information from representatives of the different mills on this trip which I made as to their output. That is what I was controlled by. That is approximately what they told me it was. I go to the mills of all of the members of the association and that largely covers these names on Exhibit 37. There is quite a few on this exhibit that are not members of the association. What I did was to give them all regardless of whether they were members of the association or not. I go to the members [fol. 832] places of business approximately once a month. That does not necessarily give me acquaintanceship with the timbered lands, of the territory covered by our members. I am interested only in their manufactured product, to see that they do it right. As to whether these Georgia mills are getting pretty close up to running without material or running out of material in many instances, I couldn't answer that question, because I don't know. They evidently have various troubles, but I don't know whether it is the lack of timber or lack of facilities in getting the logs through the mill. I have seen mills closed down because the timber was used up. Among those mills that were

closed, I might mention the Dunlevie Lumber Company at Allenburst, Georgia, and Boyd Lumber Company at Boydville, Georgia. These are both on the Coast Line (Tes. p. 661). Boydville is not on this list, because we knew they were not operating there and didn't show it on the map. They are, I believe, on this exhibit No. 36.

"Examiner Brown. No."

The Witness: Another one, the Kelly-Clark Lumber Company at Cairo. Gradyville Lumber Company, which is not directly on the Coast Line (Tes. p. 662). The reason I mentioned that was because the Kelly-Clerk Lumber Company was on Exhibit 36 here. They were served by the Coast Line by means of a short line railway running out to [fol. 833] their plant. It has since been junked. It ran out from Cairo, Georgia. I have forgotten what they called it. It is my recollection that the capacity of the Kelly-Clark Co. was about fifty thousand feet a day. I suppose they went out of business because they couldn't get any more logs. That is, they did not want to pay the prices of them. The Boyd Lumber Company at Boydville has closed down. I understand they are operating a small plant in Alabama; I don't know whether it is on the Atlantic Coast Line or some other railroad. Mr. Boyd told me he was moving because he had cut off his timber—his timber holdings around Boydville. Boydville is in Grady County, I believe, I am not sure of that; it is two miles of—west of Wigham. It is on the Coast Line; yes, sir (Tes. p. 664).

"(By Mr. Perry:)

"Q. If he had had a satisfactory freight rate from Florida to his mill in Georgia, couldn't he have remained in business?"

(Objection. Argument on objection. Objection sustained. Tes. pp. 665-667 incl.)

(Witness excused.)

"Mr. A. S. Wells: Mr. Examiner, I want to make a statement on the record."

"Exam. Brown: You may proceed, Mr. Wells."

"A. S. Wells, Chairman of the Florida Railroad Commission: When this case was first brought by the Georgia

Public Service Commission, the Florida Commission, of [fol. 834] course, was very much chagrined at the fact that a sister State would bring a case against a Florida rate or a sister-State rate, and it was not the purpose of the Commission to take any part in the proceedings or offer any testimony, although we put in an appearance at Valdosta. But when the Coast Line put into evidence a letter that was written in 1914 by our rate expert, and also one from the chairman of the Commission, the Commission then thought it was up to them to make an investigation, which they have done, and they proposed to put on this witness in this particular case

When this rate was granted, I think in 1913 or 1914, it had been in operation for years without the knowledge of the Commission. When they found out that this rate was being applied in Florida, they naturally called on the Coast Line to withdraw the rate. I am not exactly familiar with the correspondence—I thought I had it with me, but I find I have a letter file, and not the old file; but it seems that they wanted to put it in, in trains lots. The Commission insisted that they either put it in a unit of one car and make it over the entire system, or withdraw the rate. So they saw fit to appply the one-car unit over their entire system for this particular rate, which is known as the Cummer rate. The commission's letter to the Coast Line stated that they did not believe that it would be remunerative to the railroads. When that letter was written, they had not gone into the cost study; they were only assuming, I pre- [fol. 835] sume that it would not be compensatory, because just not long before that they had adopted what is known as Class P rates, and logs were being hauled under this class. This particular Cummer rate was quite a good deal lower than Class P rates. Therefore, without going into the matter or making a cost study themselves, they felt that it would not be remunerative and thought that other traffic would have to bear a part of that burden, and they didn't want that to happen, they wanted every commodity to stand on its own level and on its own footing."

"But when they saw fit, as I said, to publish those latters, naturally the Commission wanted to make an investigation to see whether or not that was remunerative to them."

"Now, the Commission doesn't take any position, or will not take any position, in reference to the changing or putting in the Cummer scale into Georgia, if they see fit. We have no objections whatever. We just don't want to be bothered in Florida with the present rates. We feel—in that letter, I should have said, it was written so that could not be misunderstood—that if you find that this rate is not remunerative, apply to the Commission and we will allow you to withdraw it. That is my understanding of the letter."

"Now, that has been in operation since 1914 up until the present time, and the Atlantic Coast Line Railroad I say I know for the last six years have not applied to the Railroad Commission for a change in the Cummer log rate scale."

[fol. 836] "Therefore, the Commission feel, after this investigation, which they will put their witness on the stand by the way that it is handled in Florida, that it is remunerative to them."

"I thank you, Mr. Examiner.

"Mr. Fred Davis: One question.

"Examiner Brown: He is not sworn.

"Mr. Fred Davis: You refer to letters that were read to Mr. Tench and Mr. Adair at Valdosta?

"Mr. A. S. Wells: They were written in 1914; they were filed in evidence and given the letters."

Fred Pettijohn was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Fred Davis:)

My name is Fred Pettijohn; Tallahassee, Florida; accountant, Florida Railroad Commission. I have been with the Florida Railroad Commission since June, 1925.

From December, 1901, to August, 1908, with the exception of about six months, during which time I was employed as price clerk for a wholesale house, my employment was almost entirely in the operating or accounting department

of railroads. From September, 1908, to February, 1918, I was employed first as accountant and later as manager of the Mutual Audit Company of Louisville, Kentucky; from March, 1918, to July, 1918, as statistician for the board appointed by President Wilson to adjust railroad wages; from July, 1918, to March, 1920, as chief accountant of the [fol. 837] United States Railroad Administration; from May, 1920, to November, 1924, as vice-president of the Roberts-Pettijohn-Wood Corporation, a public accounting form at Chicago, Illinois; and from December, 1924, to June, 1925, as a public accountant in private practice at Chicago, Illinois. Since June, 1925, as accountant for the Florida Railroad Commission.

My first railroad experience was as clerk in the disbusements office. While employed in the disbursements office I was engaged on accounts relating to authorized expenditures in connection with building programs, additions and betterments and new equipment purchases; payrolls and material issues, vouchers, bills, joint accounts, store distributions, operations of sleeping and dining cars and the abstracts, ledgers and journals kept in the disbursements office; performance reports, costs in connection with authorized expenditures, and so forth. Prior to leaving the disbursements department I was what was generally known as general clerk, subject to assignment to any of the work connected with that office.

My next employment was in the general auditor's department. While there I was employed on work relating to the separately operated properties, stations agents' balance sheets, construction acocunts, accounts receivable, and so forth.

Then I was employed in the statistical department in the apportionment of ton-miles and revenues to divisions and [fol. 838] states, according to the classified commodities.

My last railroad experience was in the operating department as material clerk, which, on the Great Northern Railway, was to all intents and purposes, division accountant. However, while employed in the operating department, I occupied every position up to and including the position of material clerk with but one exception, namely, file clerk. During my employment in the operating department I was preparing from the sources of original entry, the charges to

primary accounts by divisions and states which were later entered on the general books. In addition, at various times I handled loss and damage claims, prepared overtime ststaments of train and engine employees, reduced to penalty payments classified according to the classified delays; made up statements as to tonnage and cars handled by operating runs, cars handled through yards, and so forth. I was connected with the Great Northern Railroad. During the statistical part I was with the Union Pacific at Nebraska and the rest of the time with the Great Northern.

The Mutual Audit Company was engaged in preparing, introducing and defending analytical and cost statistics and studies in connection with railroad, express and telephone rate cases before both Federal and State commissions. While with that company, I either assisted in the preparation or prepared and introduced the evidence in practically all the important cases in which the company appeared. [fol. 839] Some of the larger cases in which I either assisted or introduced evidence for the Mutual Audit Company, are the Minnesota Rate Case, Lake Cargo Coal Case —I. & S. 27—Western Advance Rate Cases, Ten Per Cent Case, General Investigation with respect to Coal from Ohio, Pennsylvania, and West Virginia to Lower Lake Ports, The South Dakota and Minnesota Express Cases.

Before state commissions there were three rate cases before the Florida Railroad Commission; two before the Alabama Commission; four before the Ohio Commission involving the cost of transporting coal from Hocking Valley and Number 8 Coal Fields; before the Illinois Commission in connection with passenger fares, one switching case and a case relating to the cost of handling coal; two passenger cases before the West Virginia Commission involving the reasonableness of passenger rates intrastate; the cost of switching at St. Joseph, Missouri, for the St. Joseph Terminal Company, and several other cases that I can not recall. As chief cost accountant for the United States Railroad Administration, I was directly in charge of the field forces employed in determining the cost of equipment purchased by the Director General of Railroads under contract with the several car builders. During the time subsequent to March, 1920, up until I was employed by the Florida Railroad Commission, I was engaged in public ac-

[fol. 840] counting. Some of the work I was employed on between March, 1920, and June, 1925, was:

Determining, for the Director General of Railroads, the cost of steel rails commandeered by the Secretary of War; preparing for some short line carriers their claims under Sections 204 and 209 of the Transportation Act 1920; preparation and introduction of evidence in Reduced Rates 1922; introduction and preparation of evidence in I. C. C. Docket 13494, Southern Class Rate Investigation; Cost studies in connection with the cost of switching live stock from the Union Stock Yards to the plant of Kingan & Company at Indianapolis, Indiana, before both the Interstate Commerce Commission and the Indiana Commission, Dockets 12349 and 5678, respectively; Pullman Rate Investigations; two cases involving the rates on pulp wood; an investigation as to the cost of repairing cars in railroad shops as compared to the cost at contract shops.

I have read Mr. White's testimony with respect to the cost of transporting logs from Perry to Eastport, Florida. I have examined Mr. White's Exhibit No. 25, Revised, which purports to show the estimated cost per loaded car, not including interest on property other than on equipment (Tes. p. 675). As to whether or not I have made a preliminary investigation as to the time that it would take me to make a cost study service in connection with the transportation of logs from Perry to Eastport, Florida, I made in- [fol. 841] quiries as to the manner in which accounts were recorded and reported to the General Officers at Wilmington, and previous to the initiation of this case I had discussed with the Comptroller of the Atlantic Coast Line Railroad Company the manner in which expenses were recorded. From the information thus obtained I estimated the number of days that I thought it would take to determine costs on a reliable and defendable basis. I estimated it would take to prepare the cost study 600 man-days, primarily because the Atlantic Coast Line Railroad Company do not record the expenses by States, divisions, districts and branches. This would necessitate the analysis of the entire operations of the system in order to allocate and assign expenses to the line Perry to Eastport. In addition, the Atlantic Coast Line Railroad Company does not assign locomotive repairs by classes of engines or by individual

engines, which would necessitate the determination of locomotive repairs by classes of engines and to classes of service. Certain statistics would also have to be prepared for that portion of the road over which the log trains are operated, which would entail considerably more time.

I did not undertake to determine what the cost of transporting logs from Perry to Eastport, Florida, would be. I analyzed the estimated cost as reflected on Revised Exhibit 25, introduced by witness White, of the Coast Line, for the purpose of determining the accuracy of such cost. The [fol. 842] method I used in making my analysis of this exhibit was as follows:

I first secured a copy of Mr. White's testimony, which I read in connection with his exhibits. I then made an examination of the switching operations in connection with the movement of logs from Milldale to Eastport and return of the empties. Next I visited the Jacksonville offices, and, in connection with Mr. White, satisfied myself as to the manner in which the train costs had been determined and also verified the information which I had previously obtained from the comptroller of the road with respect to the manner in which expenses were recorded, and then made a trip on the log train from Perry to Moncrief. After having viewed the situation with respect to the actual physical operations of the train and yard crew, I again reviewed the costs as reflected on revised exhibit No. 25 with particular reference as to the apportionment of trains and yard expenses to other services, the exclusion of interest as an item of expense, the application of indirect to direct expense, and especially with reference to the locomotive repair cost per mile as used by Mr. White. I have prepared figures in the shape of exhibits to show the result of my study or analysis of Mr. White's figures.

(Thereupon Intervenors' Exhibits Nos. 39 and 40, witness Pettijohn, were marked for identification.)

Page one of Exhibit No. 39 shows, under the same item letters as were employed by Mr. White on his Exhibit 25, [fol. 843] Revised, the direct costs as used by me in determining the cost of transporting logs from Perry to Eastport, Florida. Under the columns "Indirect Percentage—Cost" appear the respective percentages and the amount

of indirect operating expenses, which, in my judgment should be assigned to the respective direct cost items, and under "Total Cost" appears the sum of the costs reported as direct cost and as indirect cost. I will state the difference between the direct cost as used by Mr. White and as used by me, together with my reasons for making such additions or reductions. The difference between the amounts [fol. 844] used by Mr. White and myself are set up by items on the second page of my exhibit No. 39. Item "A" shows a reduction of $111.37, which amount is one-half of the difference between the total wages and the minimum wages which would have been paid, assuming that there would be no penalty payments. The minimum wages, northbound, as computed by me, were $52.28 from Perry, and $47.38 from Carbur. The southbound movement was $50.85 to Perry and $45.95 to Carbur. The southbound movement of $50.85 it will be noted is approximately the cost which is shown under the details of Item "A" of witness White's Exhibit 25 Revised. In this manner I computed that the penalty paid on these trains amounted to $222.74, which amount includes not only overtime due to delays, but also due to local rates being paid when these log trains perform switching service at three or more stations. Obviously none of the penalty paid for at local rates is properly chargeable against the log service, and only fifty per cent of the overtime paid for on account of meeting other trains could be properly assigned to the log train, the other fifty per cent being properly chargeable to the train for which it was delayed. I therefore arbitrarily assumed that fifty per cent of the penalty wages was a very fair and reasonable allowance to make to the log business.

The next reduction, under Item "B", aggregates $594.70, the details of which are also reflected on page two of my Exhibit 39.

The reduction of $476.41 is due entirely to reducing the time of the switch crew in handling loads from Milldale to [fol. 845] Eastport and empties from Eastport to Kings Crossing, from six hours to four hours per day. I viewed this switching movement and took a check of the actual time consumed in performing this service and found that the actual time, on the day that I watched the operations, was

a little less than three hours. I also interviewed the yard foreman of Brooks Scanlon Company at Eastport. From the information that I had, I was satisfied that from five to six hours a day was devoted to switching the Brooks-Scanlon business, but this five to six hours included the time spent in switching revenue freight other than logs, to and from the Brooks-Scanlon plant. After giving consideration to the movements as made on the date that I viewed the operations, which were less than three hours, in connection with the five to six hours consumed that day, I concluded that four hours per day was an ample allowance of time to assign to the switching of log cars.

"Examiner Brown: One day was the only observation you made?"

"The Witness: That is true; but I might say, Mr. Examiner, the item of switching these cars at Eastport is inconsiderable. When reduced to a per car cost, the addition or reduction, due to the difference of one hour in switching service, amounts to but 20.4 cents per car. So it is not a very considerable item when reduced to a per car basis."

The $12.06 reflected on page two of Exhibit 39 is entirely an item of interest which does not belong to any cost accounting analysis as interest on investment should be provided for through profit.

[fol. 846] The reduction of $106.23, identified as a correction in cost per mile for locomotive repairs, one hundred and twenty-four hours at $20.56 per day, as shown on page two of Exhibit 39, was determined in the following manner: The average cost of repairs per locomotive mile on the Atalntic Coast Line Railroad for the calendar year 1925 was 21.8482 cents. This is determined from the $5,961,-875.41 and reported as steam locomotive repairs opposite account 308 on page 306, Schedule 320 of the 1925 Annual Report and the transportation locomotive miles, 27,287,762, appearing on line 41 under Schedule 531 on page 508 of the Annual Report. To the average cost per mile, 21.8482 cents, I applied the percentage 90.1037, which percentage represents, in my opinion, a fair relation of the cost of switch engine mile to the average cost per engine mile of the railroad. This produced an average cost per yard en-

gine mile of 19.686 cents which, applied to one hundred and forty-four miles per day, procured a cost per day of $28.35, as compared to Mr. White's cost of $48.91, or a difference of $20.56 per locomotive day of one hundred and forty-four miles.

The reason why I rejected Mr. White's average cost for locomotive repairs of 33.966 cents per mile was that the average cost per mile used by Mr. White, namely 33.966 cents, was the average cost per mile for all classes of engines operated on what is known as the third operating district for a portion of the year. Every one who has ever [fol. 847] made an anlysis of engine costs per mile, knows that the cost per mile varies, not only as to classes of engines, but also as to different periods of the year and according to the standard of repairs and use to which locomotives are put.

Knowing that the average cost per mile, as used by Mr. White, was not reliable, and not being aware of any logical reason for the repairs to locomotives in this service being greater than the repairs for the system, I would not accept the average cost per mile as used, as correct.

The Coast Line do not record the cost of repairs to locomotives either by individual engines or classes of service, and it was therefore impossible for me to determine the average cost of repairs per engine mile obtaining on the Atlantic Coast Line Railroad for each class of service. The average cost of repairs per engine mile obtaining on the Atlantic Coast Line during the calendar year 1925 was about ten per cent higher than the average cost per mile obtaining on the Florida East Coast Railway Company during the calendar year 1925; and as I had previously determined the average cost of locomotive repairs by classes of service obtaining on the Florida East Coast Railroad, I then computed, by classes of service, the percentage relationship which the cost of repairs per engine mile for each class of service bore to the average locomotive repair costs per mile for all classes of service, and applied the percent- [fol. 848] age relationship so determined to the average cost per engine mile for all classes of service obtaining on the Atlantic Coast Line Railroad Company system.

The average cost of locomotive repairs per mile, in freight service, was 121.3442 per cent, and in switching

service 90.1037 per cent of the average cost per locomotive mile for all services on the Florida East Coast Railroad during the year 1925. These percentages were applied to the average cost per mile of 21.8482 cents on the Atlantic Coast Line, and produced a freight cost per mile of 26.5115 cents and a switching cost of 19.686 cents.

I will explain the decrease of $387.46 under Item "G" on page two of my Exhibit 39. $381.35 of this difference is due to elimination of interest as an operating expense. Interest is a charge against income and has to be provided for through profits. There is a difference of $2.61 due to adjusting the depreciation charges to a period of thirty days, instead of one-twelfth of a year. There is also a difference of $3.50, due to Mr. White having apportioned the depreciation on locomotives on the basis of the car miles rather than on the basis of train miles, train miles and locomotive miles being used interchangeably. Locomotive repairs and depreciation are properly assignable upon the basis of the mileage made by the locomotive in Brooks-Scanlon and Putnam service, instead of upon the basis of the car miles made in Brooks-Scanlon and Putnam service. The car mile percentage assignable to Brooks-Scanlon is [fol. 849] 67.60 per cent, as against 66.34 per cent assignable on a train mile basis.

I account for the decrease of $801.10 under item "E" on page two of my Exhibit 39 as follows: Of the $801.10, $701.30 is due to my using the average system cost of locomotive repairs per engine mile, equated by the application of the factor 121.3442 per cent which produced an equated cost of 26.5115 cents, as explained under Item "B", instead of using the 33.966 cents employed by Mr. White. The reasons why this adjustment is made were fully explained under Item "B". The remaining difference, $49.80, is due to the use of the factor train miles, 66.34 per cent, instead of the factor car miles, 67.6 per cent, train miles being the proper factor rather than car miles for the apportionment of locomotive repairs.

The next amount, $71.73, is prefaced by an asterisk. The $71.73 is in the nature of an addition in that by reducing the direct costs from $14,006.00 to $12,112.34, I have reduced the amount chargeable to other traffic from $532.00 to $460.27, and simply represents the difference between

the amount assigned to other traffic by Mr. White and by me.

As to the last item under account "C", amounting to $419.28, I will explain what this decrease consists of, of the $419.28, $416.50 is due entirely to elimination of the item of interest on cars. Interest is not a proper operating expense, and interest on investment should be provided for out of profit, and has therefore been eliminated from the [fol. 850] cost study. The remaining $2.78 is due to adjusting the depreciation on one hundred log cars to a period of thirty days, instead of one-twelfth of a year.

On page 2 of my exhibit, under the column "Decrease" there appears an amount of $2,242.18, which represents the difference between the estimated total direct cost of $16,893.00 reported under statement "K" of Exhibit 25 Revised, increased by $1.72, representing fractions discarded by Mr. White under the different items and decreased by $1,072.00 cost of car hire under contract and the $13,580.54 appearing on page 1 of my Exhibit No. 39 as total operating expenses, direct cost. In other words, it represents the difference between what Mr. White terms total direct cost less cost of car hire and what I term total operating expense, direct cost.

The $1,386,00 appearing as Item "G", cost of maintenance, roadway, and the $1,723.00, apearing as Item "H" cost of car maintenance, a total of $3,109.00, have been accepted by me without adjustment for the reason that I have no statistics with which to make a satisfactory apportionment of those expenses to this traffic. Under the column "Indirect Percentage" I have employed four different percentages for application to the direct cost as against the aggregate percentage of 27.7 per cent used by Mr. White and as reflected opposite Item "I" on statement "K" of Exhibit No. 25 Revised. I will explain, first, why, I did not [fol. 851] adopt the percentage used by Mr. White; second, what the percentages as used by me represent; and, third, my reasons for applying the percentages used by me rather than the percentage adopted by Mr. White. The manner in which Mr. White developed his percentage of 27.7 per cent is clearly indicated on sheet three of Item "I" of Exhibit 25 Revised, and simply represents the relationship of what he has classified as indirect to direct expenses for all

freight operating expenses. It is a cardinal rule of cost accounting that costs should be allocated according to the responsibility therefor. Obviously the indirect expenses under the general group of expenses, maintenance of way and structures, have no relation whatever to the direct cost obtaining under other general groups of expenses. In a like manner, the traffic being already contracted for, would not need any solicitation or traffic expenses, and no traffic expenditures should therefore be assigned against this traffic. Page one of my Exhibit 40 reflects by general groups the percentage relationship of indirect to direct freight expenses. Page two of my Exhibit No. 40 shows my assignment of direct and indirect freight expenses common to each and to both classes of service. In explanation of page two I might say that the only difference in the assignment of indirect and direct expenses as made by witness White under Item "I", sheet two of three, and as made by me, are that he assigned Account 374, Weighing, Inspection and De- [fol. 852] murrage Bureau, amount $94,807.00, and Account 418, Loss and Damage Freight, in amount $625,686.00, to indirect expense, whereas I have classified as direct expenses. My reason for classifying these expenses as direct is that no portion of the Weighing, Inspection and Demurrage Bureau are properly chargeable to this traffic, and it is my understanding that no loss-and-damage claims are paid with respect to this log movement.

The percentages appearing on page one of my Exhibit 40 opposite each of the general groups of operating expenses must be increased by the percentage shown opposite general expenses, namely, 3.813 per cent. In a similar manner, the percentages under transportation-rail line shown opposite yard and road respectively, must be increased by the percentages shown, namely, 11.8883 per cent and also the amount shown opposite general expenses, 3.813 per cent.

I will take up my item indirect cost and total cost and explain how they were determined. The amounts reported under indirect cost are arrived at by applying to the amounts shown under direct costs, the percentages shown under indirect percentage, while the amount shown under total cost simply reflects the sum of the amounts reported under direct costs and indirect costs. The total operating

expenses chargeable to the log service as reported on my Exhibit No. 39 is $16,352.56. The average operating expense per car predicated upon my assignment of expenses is $11.93. The average revenue per car from this log traffic [fol. 853] according to the witness Perrin, is $20.47. That would produce an operating ratio of $58.27. The operating ratio of the Coast Line on the system for 1925 was 69.11 per cent (Tes. pp. 688-689).

Hire of equipment is an item properly included in determining the reasonableness of a rate—Item "F". The manner of determining the figure of $1.49 for item "J", taxes, is shown in detail on pages 3 and 4 of my exhibit and I do not believe needs any further comment. The total cost which I found, amounting to $14.20, shown on my exhibit, reflects, in my judgment, what the cost of transporting a car of logs from Perry to Eastport and returning the empty car would be under witness White's Exhibit 25 Revised, had White confined his costs to items properly included in measuring the reasonableness of a rate, and had he further made a fair distribution of the hours consumed in switching log cars and on freight between Milldale and Eastport, and had he assigned the locomotive repairs to this traffic under a fair, reasonable and justifiable basis. From an operating standpoint this is an attractive and exceptional service for the reason that it is a regular service which permits of the direct assignment of equipment and considering the volume of tonnage to be handled it means considerably less number of cars and considerably less number of locomotives per traffic unit than any other class of equipment on the Atlantic Coast Line that I know of. I mean, by reducing the number of equipment units necessary to handle this traffic [fol. 854] in proportion to the tonnage. The average car miles per freight car day obtaining on the Atlantic Coast Line for the year 1925 was 29.4 miles, whereas the average freight car miles per car day with respect to the log traffic was 78.7 miles, or a little over 2.5 times as much. Likewise, the locomotive miles per locomotive days, freight service road, obtaining for the system was 66.9 miles, as against 99.4 miles obtaining with respect to the log service, an increase of approximately 50 per cent per car day. All this, in my opinion, tends to show this is a very exceptional service and cannot be reasonably compared to the general serv-

ice of the road and cannot be compared by the use of any common factor.

If that locomotive had to be engaged for the switching of traffic for those other three companies at Milldale it is not proper to charge all of the preparatory cost to one class of traffic alone, namely, logs. It is not proper to charge to it all the costs incident to getting the locomotive to Milldale itself before it is in position to perform any service for these other companies. I state as an experienced accountant that it is a good accounting practice to exclude interest, as I have excluded it in our Exhibit No. 39. Interest is never an item of cost in determining the reasonableness of a rate. We had that same item to contend with under Government contracts during the war, under cost of production; but very few accountants have ever proposed the theory of including interest as an item of cost.

(Exhibit Nos. 39 and 40, witness Pettijohn, were thereupon received in evidence.)

"Ex. Brown: It is understood Mr. Pettijohn will be cross-examined later."

[fol. 855] A. T. GOETHE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination (Tes. p. 693).

(By Mr. Cotterill:)

A. T. Goethe, 623 Laurel St. My associates and I purchased the Epinger & Russell tract, so-called; sometimes known as the Montague tract. There is approximately 190 million feet in that tract. The rate of cutting that in order to exploit it economically is about 20 million feet a year. We are in the course of developing it at that rate. We are putting up two mills on it now for that purpose. My associates and I were entirely familiar with the conditions of that tract for a long period of time; for the last ten years. We cut out a large section adjoining that at Manning, Florida. I knew it was for sale at that time (Tes. p. 694).

I was not induced directly or indirectly by anybody connected with this litigation to purchase that tract. I purchased it nearly ninety days ago. I had an opportunity, if I wished to do so, to have built a mill at some other place than I am now building it. I located our mill in the timber rather than at Jacksonville and ship logs by railroads because I thought it would be to our advantage to do so from the standpoint of cost. Even if I were sure that there would continue in effect the so-called Cummer scale I would rather have it in the woods. It is the practical, normal place to construct the saw mill. That is the way I think about it; that is where I always constructed mine. I have been engaged in the log mill business about thirty [fol. 856] years. If I had been located at Valdosta, Georgia, I would not have given consideration to the purchase of this timber on basis of the main line rate from the timber to Valdosta, because if I were not in that tract of timber Jacksonville would be the logical place to put it. Valdosta would not be the logical place because I would be a good way from market. It wouldn't pay.

Cross-examination (Tes. p. 696).

(By Mr. Price:)

What I meant by the main line rate from the timber to Valdosta was that you could not afford to ship those logs to Valdosta and saw them; you couldn't do that at all, because you would be getting away from the market. Here is the logical place to put that saw mill, in Jacksonville, and ship it where you want to (Tes. p. 696). What I mean by main line rate is just the freight rate. It is all main line that you pay to the railroad I suppose.

Manning is 41 miles on the Coast Line Railroad going south on the Gainesville division; I think it is 41 miles, it is right near there. I couldn't tell you if it is on the Dupoint line. Manning lays east of Lake City, I would say as a guess, about 40 miles (Tes. p. 697). Sort of east, as near as I can guess at it now. I couldn't say for certain about that.

I did not inspect any other timber with a view of pur- [fol. 857] chasing anywhere on that division of the Coast Line in Florida, not for a long time I haven't Maybe

in years gone by I might have; I don't remember about that because I was inspecting so much from time to time; but I haven't in the last few years. I am not familiar with timber lands between Live Oak and the Georgia State line, and I have never inspected any timber in the section from High Springs to the Georgia State line. I don't know anything about it, whether there is any timber in there or not.

"Q. You say that you would not—if you had been located at Valdosta—have given consideration to purchasing this timber on basis of the main line rate, as you call it. Do you mean by that whether it be the Cummer scale or any other scale? (Tes. p. 698).

"A. Why, it would not have paid at all to ship logs to Valdosta, an immense amount of timber like that; a man can't afford it; you have got to ship it where you can get rid of it at the best market" (Tes. p. 699).

"Q. Do you think it would be an unreasonable presumption for that man at Valdosta to consider buying timber in Florida?"

"A. Well, if he had a market and handled thirty thousand feet a day it would not be unreasonable on that size tract; but I can't see where he could have that size tract around Valdosta. That is my opinion. I do not believe that he could dispose of it in Valdosta. I don't believe I could do it if I had a mill there. He might know more about saw [fol. 858] milling than I do and be able to do it but I couldn't do it."

Redirect examination (Tes. p. 700).

(By Mr. Cotterill:)

If the mill already in Valdosta had a capacity of 25 or 30 thousand feet a day, or up to 50, for that matter, and such a mill owner acquired a tract of timber aggregating 190 million feet, he could not possibly handle that 190 million feet of timber with a mill no bigger than that. He ought to cut up seventy-five to eighty thousand feet a day any way. I can't see that there would be any advantage in paying transportation costs on that amount of logs necessary to cut out the timber when there would be no outbound advantage in the freight rate. It looks like it will be throw-

ing money in the sewer to me. He would go broke before he got started good.

Recross-examination.

(By Mr. Price:)

That is my judgment. As to whether I know what that man in Valdosta had in mind if he said he was going to increase his operations to 200,000 feet a day, I don't know what he is going to do. As to whether it is possible—he could do it if he wants to, but I don't see how he could afford to mill all of that timber in Florida. That is his business. I don't know anything about his business; but I don't see how I could do it out there, and I don't believe that anybody else could do it. If he had a market,—well, I don't see how that is possible at Valdosta because that is an inland town. I don't know anything about Valdosta (Tes. p. 702).

(Witness excused.)

[fol. 859] Jacksonville, Fla., Jan. 20, 1927—
9:00 o'clock a. m.

Met pursuant to adjournment.

FRED PETTIJOHN was thereupon recalled as a witness and, having been previously sworn, testified as follows:

Cross-examination.

(By Mr. Carl Davis:)

I stated that interest on investment should be provided for through profit. I don't believe that is a rather loose use of the word "profit". As to what system of accounting under which I find interest provided for from profit, you should figure interest from return on investment, and your return on investment should be made through profit of the company rather than through cost of operation.

My definition of cost of operation is, operating expense plus joint facility and equipment rents and taxes. My

definition of profit is, the difference between what it costs to buy something and what the selling price is.

I am familiar with the Interstate Commerce Commission classification of operating expenses as applied to railroads. As to whether interest derived from profit is in that: Interest on investment does not appear in the I. C. C. classification in any place. Interest against moneys paid or money received is a charge against income and is not included in operating expenses.

[fol. 860] "Q. It is a charge that has to be taken into consideration before you determine profit, isn't it?"

"A. Not interest on investment. It does not appear on the I. C. C. classification what provision is made for it (Tes. p. 704).

"Q. What does appear on the I. C. C. classification as to interest?"

"A. Interest on money borrowed and interest on money loaned, which are charged or credited to income account; interest on construction, which is a charge to investment, real estate or personal property."

"Q. Then if you borrowed money and invested it in property, interest on the money borrowed would have to be provided for before you could determine whether you had made any profit on the use of your peoperty under the I. C. C. classification?"

"A. It would have to be considered in determining whether the company had actually made any profit; but the amount of the interest which would properly be capitalized would not necessarily be the interest which was paid for the money borrowed."

"Q. Suppose that you had invested one hundred thousand dollars in a piece of property, railroad property. Money is worth six per cent, let us assume. Your gross revenue is forty thousand dollars. Your gross expense is thirty-eight thousand dollars. How much profit have you?"

"A. You have two thousand dollars under that hypothetical question."

[fol. 861] "Q. And that is what you call profit?"

"A. If you include in your——"

"Q. Could you answer that 'yes or no'?"

"A. No, I wouldn't answer it that way."

"Q. All right?"

"A. If you include under your thirty-eight thousand dollars the items which I have enumerated in addition to operating expenses the two thousand dollars is the only profit which you have applicable to your investment."

I have included in addition to operating expenses in my Exhibit 39, hire of equipment, joint facilities and taxes. As to whether, in my opinion, when I have paid expenses, including hire of equipment and joint facilities, and I have $2,000 left as a return on a $100,000 investment, I figure that I have made $2,000 profit for that year, I say that my profit is $2,000. Profit is what I have to pay return on my investment out of. Then, if I were operating a railroad and had borrowed that $100,000 from somebody else, and made a profit of $2,000 for a period of 10 years, I would probably wind up in the receivers' hands for lack of paying the interest; under that theory, I would certainly. As to how that theory differs from mine, well I don't agree with you that you have only made $2,000. In the hypothetical question I was asked how much profit I did make and I said $2,000—that is correct. Then, under that hypothetical question, and as I construe profit, I would be $4,000 a year shy of paying my interest, assuming that I paid 6 per cent interest. And under my theory, and having made a profit of $2,000 a year, [fol. 862] I would most certainly go broke; but I am not admitting that your $40,000 gross earnings and $38,000 expenses applies; I just answered your question on the assumption that this was the profit you had; but I am not applying that to the transportation of log-.

"Q. I am trying to find out what you mean by a profit. If I understood you, you told me that in that hypothetical case, as you understood the word profit, I would have made two thousand dollars profit each year; is that right?"

"A. That is correct; you have made the two thousand dollars profit."

"Q. Before I had even paid my interest?"

"A. Well, as previously stated, your interest on your investment in my opinion has to come out of your profit."

"Q. Well, then you are at variance with the Interstate Commerce Commission, are you not?"

"A. I don't believe I am."

"Q. Will you show me where in the accounting classification of the Interstate Commerce Commission, interest on money borrowed is a deduction from profit?"

"A. Mr. Davis, we are not talking about interest on money borrowed any place. As previously stated to you, interest on money borrowed is an income charge. It is not given consideration by the Interstate Commerce Commis-
[fol. 863] sion in the fixation of rates in any case that I ever knew of. And interest on investment is an entirely different matter from interest on money borrowed."

"Q. That is entirely possible; but if I understand the purpose of your exhibit, it was to show whether or not the handling of these logs at these assumed figures was a profitable transaction. I understood you to say that in determining profit, you paid no attention to income on money borrowed and invested in the property; is that right?"

"A. That is correct."

"Q. I then asked you whether or not under this assumed case, with the expenses computed exactly as you have computed the expenses and including all that you have included, with a gross income of forty thousand, and these expenses computed as you have computed these amounted to thirty-eight thousand dollars, how much profit you had made; I understood you to say two thousand dollars?"

"A. Well, I have not computed any figures at thirty-eight thousand dollars."

"Q. I did not say you had. I was including the items that you have included. Suppose that they amount to thirty-eight thousand dollars, including every item of expense that you have included—not the figures; your gross revenue is forty thousand dollars; and your expenses, computed as you have computed these expenses, thirty-eight; how much profit have you made? You sand two thousand."

[fol. 864] "A. That is the difference between them. You have two thousand dollars out of which to pay return on investment."

"Q. That is your definition of profit?"

"A. That is everybody's definition of profit—the difference between your selling price and cost. I never heard of profit or interest on investment being included as an operating expense."

"Q. I did not ask you that. Have you ever read in the Interstate Commerce Commission classification the definition of the account profit and loss?"

"A. Yes, sir."

"Q. What does that account mean?"

"A. Your profit is the profit which is attributable to profit after all deductions, other than operating expenses and taxes, have been taken out."

"Q. One of those deductions is interest, isn't it?"

"A. Yes; but that is not what the Interstate Commerce Commission uses in measuring the reasonableness of a rate of return on investment."

"Q. That is true, but I did not ask you anything about that. I want to know in what sense you used this word "profit" when you said that interest on investment should be provided for through profit."

"A. Exactly in the sense that I have used it——"

"Q. Yes, sir, that is——"

[fol. 865] "A. Just a minute. Just a minute, please. I am enumerating the items for you, Mr. Davis. On page 301 of the annual report of the carrier there appears a return of the amount of net railway operating income, the net of the return on line seven, which is railway operating income, plus lines 15 to line 20, inclusive, which includes rent from hire of freight cars, rent from locomotives, from passenger cars, from boating equipment from joint equipment, and joint facility rent income; less that appearing on lines 35 to 40 inclusive which is hire of freight car debits, rent for locomotives, rent for passenger train cars, for floating equipment, for work equipment, and joint facility rents. The net figure is the net railway operating income, which is used to measure the return upon investment. The item of income or the item of interest does not appear in that computation, or is not provided for by the I. C. C. in measuring return upon income or return upon investment."

"Q. Now, down to that point in that classification, where have you found the word 'profit'?"

"A. There is no 'profit' appearing in there."

"Q. Exactly. Then where do you go in that classification before you do find the word 'profit'?"

"A. You go down to where you transfer your net income to profit and loss."

"Q. Before you get to that then you have charged to income interest on money borrowed, have you not?"

[fol. 866] "A. Yes, sir, and credited to income, income from funded and other securities."

"Q. Therefore, in arriving at that classification, you have to take into consideration interest on the money borrowed, do you not?"

"A. That is true."

"Q. Then what is your justification for saying that interest is to be provided for through profit, assuming that the money is borrowed and invested in the operation?"

"A. You are talking about two different kinds of interest. One of them you are talking about is interest which is a charge or credit to income; the other you are talking about is interest which is a return upon investment; and at no place in the I. C. C. classification does there appear any account for reflecting the interest on the investment."

"Q. What should be the difference in a proper accounting classification between interest on money borrowed and invested in the property, and interest on the investment, as you use those terms?"

"A. Well, interest on money borrowed is an actual expenditure to the company."

"Q. Yes?"

"A. Interest upon investment is a computation purely and simply; if you make it you get it, if you don't make it you don't get it or would not have to account for it."

"Q. In your judgment that last mentioned interest which [fol. 867] you have described is not to be considered in determining the reasonableness of a rate, is that true?"

"A. No, I did not say that, nor I wouldn't say that."

"Q. Well, then, why shouldn't you consider it in this case."

"A. Because it is not a proper item to consider in costs, and I am showing the costs."

"Q. Then you are not showing expenses, you are showing costs?"

"A. I am showing operating expenses plus the cost used in measuring the reasonableness of a rate. Now I have not undertaken to determine what your return on the investment in property used in the transportation of logs or any other commodity is."

"Q. Would it be fair to say that for purposes of this exhibit you are not interest- in that?"

"A. I think if you will read my statement, Mr. Davis, you will see that I simply took Mr. White's costs, and stated with the information which was available, and with what I thought should be done with his cost figures, they should be revised in the manner in which I revised them. I have attempted to say what I thought the rate should be."

"Q You were asked this question yesterday: 'The total cost which you found, amounting to $14.20, shown on your exhibit, reflects, in your judgment, if I understand you correctly, what the cost of transporting a car of logs from Perry to Eastport and returning the empty car would be under witness White's Exhibit 25 Revised, had White confined his costs to items properly included in measuring the [fol. 868] reasonableness of a rate and had he further made a fair distribution of the hours consumed in switching log cars and on freight between Milldale and Eastport and had he assigned the locomotive repairs to this traffic under a fair, reasonable and justifiable basis, is that correct?' You said, 'Yes, that is my opinion '?"

"A. Yes, sir."

"Q. Do you remember that?"

"A. Yes, sir, and I still say it."

"Q. Then does it follow from that that you have included here all of the items that you think should be included here —all of the items that you think should be included in determining the reasonableness of a rate?"

"A. Yes and no."

"Q. That is a peculiar answer."

"A. Yes, it is."

"Q. Is it one or the other?"

"A. No, it is not one or the other. It has to be a qualified answer. In the first place, there does not appear at any place in this tertimony or in this case what the interest on the investment devoted to this traffic is; but the Atlantic Coast Line Railroad, under an operating ratio of 69.11 per cent, has had a return of over five per cent upon the total investment in its property."

I might say, using the investment in road and equipment, plus the improvements on these properties, appearing on page 200, under accounts 701 and 702 of the Interstate

Commerce classification, there is a return of over 8 per cent on the investment in road and equipment plus the im-
[fol. 869] provements on leased railroad property. In my judgment, that is not a fair measure of the return; I think that is a little high. As to whether the book investment, the figure that he has written there, plus those items, is the proper investment on which to compute a fair return, no; they should be expanded by including therein the investment in the leased properties that are operated, to make this return. As to whether I find myself, then, at variance with the Supreme Court in saying that you are entitled to a fair value on the property, I have not expressed an opinion on that at all. I quoted you what the return was on the investment. I never said anything, and the question was never raised, as to the return or what was the proper basis for computing a return.

I referred to the fact that the Coast Line has earned some return on investment plus some other figures which I have mentioned; under the effective accounting classification with respect to operating expenses, that, in my opinion, is a proper basis for determining the reasonableness of a rate. As to whether the principles which underlie such a proper accounting classification as I have just described are the principles which I have applied here in my Exhibit 39, I have followed the I. C. C. classification entirely. As to whether the profit to which I refer, in saying that interest is to be accounted for out of profit, is not the profit that is in the Interstate classification as profit and loss, I have used the term "profit" generally; and as I have used the term "profit", it represents the difference between the revenue and those items which go to make -p net railway operating income.

[fol. 870] The taxes which I have dealt with on page 4 of my Exhibit 39 are not in the report to the I. C. C. made by the Atlantic Coast Line for the year 1925 but are in the report to the Florida Railroad Commission. They are the same up to a certain number of pages, but commencing with the 700th page, it seems that they did not report to the Interstate Commerce Commission but report strictly to state commissions.

I have computed the percentage of Federal income taxes on the basis of net revenue from railway operation. I have

computed the percentage of Florida taxes on the basis of revenue operating expenses. I have computed the percentage of capital stock tax on some other basis. I will explain the reason for using three bases on that page. Allow me to say, first, that I think you are mistaken. I have only used two bases. In the first place, I have assigned the corporation income tax upon the basis, or upon the theory, rather, that the net revenue from railway operations is the only available data we have for computing the corporation's income tax for the system, to the operations of any individual state. Now, with respect to Florida taxes, they are predicated upon a fixed valuation per mile of railroad, plus the taxes on the equipment actually in Florida at a given period, predicated upon the original cost of that equipment, depreciated to the present time; and not having the value of the road-bed and equipment that is used exclusively in that business, it appeared to me that the proper manner of treating taxes was in the same manner as you would treat a capital or a general expense, that is, in relation to what the [fol. 871] other expenses were. And I might say that had I applied the total taxes of the system to Florida upon the expense basis, I would have charged but $1.21 to taxes rather than $1.49 as I did charge there. I use in one place net revenue and in another place operating expenses because one of the taxes is on revenue and the other is not. Your corporation income tax is dependent upon your net income. Now, the items that go to make up the income upon which you pay taxes can not be allocated directly to the respective states; as a general proposition, they are a system charge and they should be prorated to your states upon some basis; and I have used in lieu of having any other available basis, the net revenue from railway operations.

Certainly, interest is a deduction in determining the income tax, but, as I previously stated, there is no way of applying interest to the operations of this traffic, and there is no way of applying interest received or interest paid to the respective states. This figure that I have used here in computing the percentage for corporation income tax does not contain any attempt to sub-divide the income under the various states. It does not have anything in it at all about income, except as income is included in revenue. As to

whether, had I used income rather than revenue, I would have produced a different result, well, as I have just saod, it is impossible for the Atlantic Coast Line or anybody else to make this computation upon the income applicable to the State of Florida. It is correct that I have not attempted to apply income for the State of Florida; I have taken the revenues from the system. I couldn't take the revenues [fol. 872] for the State of Florida because it is impossible to get the revenues for the State of Florida from the railroad company's records. As to what the State of Florida has to do with it from the income point of view, when it has nothing to do with it from a revenue point of view, it has to this extent; If it was based upon income, I would have to determine the income upon the transportation of these logs, and that would necessitate the assignment of all income debits and credits from the system back to the transportation of these respective logs, and of the money received fr-m them, which would be a physical imposibility.

I attempted to determine the revenue on these logs. It appears on page 4: 6.715 per cent of $8.54, the difference between what you received per car and my average cost per car.

"Q. I grant you, but the 6.715 is based upon percentage of net revenue for railway operations for the system and corporation income tax for the system, isn't it?"

"A. Yes, sir, and the percentage is applied to the net revenue from railway operation on these logs."

"Q. But since the federal income tax is not based on revenue, there was no necessary reason for your taking revenue, rather than some other figure, was there?"

"A. Yes, sir, I think there was. I think the most appropriate figure you have when you come to deal with the income tax applicable to a specific commodity is your net revenue from railway operations."

"Q. Rather than your net railway income, which is the basis of the tax?"

"A. Yes, sir, for the simple reason that it is impossible to determine your net income attributable to a specific commodity."

[fol. 873] "Q. Any more impossible than to determine your net revenue? That is where I am at a loss."

"A. Yes, sir, for this reason: that the Atlantic Coast Line Railroad doesn't even go to the extent of determining its operating expenses by state lines. Now, in order to apportion this little revenue, it would be necessary to undertake to determine for the State of Florida the net income applicable for it, and it wo-ld further be necessary to spread all the income debits and credits to that traffic."

"Q. In spite of the fact that you don't attempt to make any such spreading of revenue, you can take the revenue for the system but you couldn't possibly take the income from the system as a basis?"

"A. If I took the income from the system as a basis, I would have nothing to apply it to without having first determined the income from this specific commodity."

"Q. You have already determined that from page one,—you claim to have?"

"A. No, I have not. I have determined the net revenue from railway operations, and I have further determined the net railway operating income."

"Q. Well now, wherein do the necessities of that case differ from the necessities of the Florida taxes, so that in the Florida taxes you used operating expenses as the criterion?"

"A. Well, as I stated before, I didn't have the value of the property devoted to this specific traffic, and I therefore treated taxes—as is very common—as a general expenditure, and applied the same ratio of taxes to cost as [fol. 874] applied to the whole State."

"Q. Then you say that the last compilation on that page is not different from one of the others, that there are only two bases?"

"A. That is correct, except to this extent; perhaps I had better say in determining the U. S. Government taxes, other than corporation income tax, I applied that tax to the State of Florida on the basis of the average miles of road operated; and having applied it to Florida on the average miles of road operated, I then reapplied the Florida proportion of these taxes upon the basis of Florida operating expenses."

It is correct to say that I testified that the computation that I have made in here with respect to items of revenue and income were taken from the report to the Florida rail-

road commission for the year 1925 by the Atlantic Coast Line. The result would have been the same had I applied the figures which were reported to the Interstate Commerce Commission as far as the income tax is concerned. The result would not have been the same as far as all the figures are concerned, for the reason that commencing with sheet 600 in the report to the Florida Railroad Commission there are only the statistics that are applicable to the operations in the State of Florida. The Interstate Commerce Commission did not get a copy of these statistics.

I testified with respect to the net railway operating income for the entire system, yes. That is shown in the report to the Florida Railroad Commission, yes. It is also shown in the report to the Interstate Commerce Commis- [fol. 875] sion. And I might say that the first page to page 524 of the report to the Florida Railroad Commission deals with the operations and statistics of the entire system, and it is the same report that is made to the Interstate Commerce Commission; in other words, the report to the Florida Railroad Commission contains the same item as net railway operating income as the report to the Interstate Commerce Commission.

[fol. 876] "Mr. Perry: If your Honor please, I would like to make a brief statement to preserve the continuity of the witness just leaving the stand. In view of the statement made by Chairman Wells of the Florida Commission on yesterday, I simply desire to direct attention to the reason of the Georgia Public Service Commission for bringing this application, as fully outlined in the testimony of its rate expert, Mr. E. M. Price."

"While on my feet I would like to suggest the importance of counsel, Judge Cassidy, to furnish a list of the members of the Georgia-Florida Saw Mill Association as shown on Exhibit 37 introduced by Mr. Reeves on yesterday. He stated that certain mills shown here are not members of the Association, Judge Cassidy. I think as the Georgia-Florida Saw Mill Association is an intervenor, that it would be proper to show just the members as shown on this Exhibit 37. It will be no trouble?"

"Mr. Cassidy: I will be glad to furnish that information. Do you want it merely for your own information, or do you think it should show in the record?"

"Mr. Perry: I think it should show in the record."

"Mr. Cassidy: I will be glad to furnish it today."

"Mr. A. S. Wells: Mr. Chairman, I would like to add, if it is admissible, one thing to my statement on yesterday, to clarify it. In making this investigation, it was not for the purpose of trying to show that this rate should become effective interstate; it was not for that purpose; it was [fol. 877] only for the purpose of ascertaining whether or not this traffic, as it is now conducted in Florida, is remunerative. We did not go into the other phase of it, and I want the record to show that plainly—that it is not for the purpose of having this particular rate put in interstate."

"Examiner Brown: You are referring to the cost study testified to by the preceding witness?"

"Mr. Wells: Yes, sir; this cost study is made on the present operation of logs in this State."

"Mr. C. Davis: May I ask is that the cost study that was introduced by your witness?"

"Mr. Wells: Yes, sir. That was only made on the operation of logs in this State, as they are handled now, and not a cost study of what it would be interstate possibly in a different way; as they are handled now in the State of Florida on the A. C. L. Railroad."

"Mr. Gwathmey: Mr. Chairman, it may be understood, I assume, also that this study is to be considered as made in relation only to the handling of logs over the A. C. L. Railroad?"

"Mr. Wells: I so stated."

J. S. FOLEY was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Rutherford:)

My name is J. S. Foley. I reside in Jacksonville, Flor- [fol. 878] ida, and I am engaged in the lumber business (Tes. p. 728). I am vice-president and general manager of the Brooks-Scanlon Corporation. Its plant is at Eastport, Florida, near Jacksonville. I succeeded Mr. M. L. Fleishel

as manager of this company in 1919. We have complete saw and planing mills, together with all necessary facilities, and in addition, own the town site of Eastport. Among our facilities at Eastport we operate an industrial railroad which does all plant switching. The principal business of Brooks-Scanlon Corporation is manufacturing yellow pine lumber. The present plant at Eastport commenced operations in 1915, as I recall it, the plant being first operated under the name of Carpenter-O'Brien Company, and in 1917 changed to its present corporate name, Brooks-Scanlon Corporation (Tes. p. 729). Our logs are transported from our own holdings and transported to Perry and Carbur by our own crews, where they are taken over to the Atlantic Coast Line in solid trainloads and from there transported by the Atlantic Coast Line to Eastport, where they are again turned over to our industrial crew. We have 460,000 acres situated in Taylor, Jefferson, Madison, Dixie, Lafayette, Alachua and Wakulla counties. It totals over one billion feet of standing timber.

After the cars are made empty at our Eastport plant, our industrial engines place them on the delivery track, all coupled up ready for the Coast Line switch engine, which takes the empties to Kings Crossing; from there a road [fol. 879] crew handles them, either to Carbur or Perry, where they are placed on the delivery track, from which places our industrial crews handle the empties to the woods for loading and return to the delivery track at Perry and Carbur, respectively. No switching is necessary or is performed by the Atlantic Coast Line at either of these places (Tes. p. 730). That is a regular movement nightly of loads and empties. It is practically a movement of loads and empties every working day of the year. We have specially equipped cars for handling logs in the service of the Brooks-Scanlon Company at Carbur, Perry and Eastport, of 175, 75 of which are owned outright by the company and 100 owned by the Atlantic Coast Line. There is a joint delivery track at Eastport and the Brooks-Scanlon Corporation owns the remainder of the track. We furnish the Coast Line water facilities at Carbur without charge.

With respect to maintenance and repair of car equipment, at different places there are provided inspection forces, the

principal ones being at Perry, Carbur and Eastport. We bear a substantial part of such cost of inspection, the object of which is to determine the condition of the equipment as it passes from the Coast Line to our exclusive possession. Under the system prevailing, when the equipment has passed such inspection and goes into our exclusive possession, we are responsible for, and must pay, the cost of any repairs made necessary by reason of damage or breaks which occur while the cars are in our possession; such arrangement being modified, however, in cases where subsequent investigation discloses that the break was due to only [fol. 880] a concealed owner's defect. In fairness, it should be said that our willingness to bear a substantial portion of such inspection expense, as well as a liberal contribution to the expense of maintaining the equipment, is in our own interest, because it facilitates and expedites the movement of the equipment. However, the total expense of the carrier is reduced by such an arrangement, resulting on both direct and indirect benefit which tends naturally to lower the costs (Tes. p. 732).

The plant of the Brooks-Scanlon Corporation at Eastport has been enlarged since I have been connected with that organization, namely, in 1923. We purchased additional timber in October, 1922, in the vicinity of Perry, totaling two and three-quarter million dollars, enlarged our mills at Eastport, built additional houses, increased our handling facilities, calling for an investment of substantially a million dollars, constructed entirely new camps in this timber at Scanlon, Florida, bought logging equipment, rails and locomotives, totaling an investment at that point of approximately half a million dollars; or making a total investment based on the movement from Perry to Eastport of this additional timber of over four million dollars. Our proposed enlargement and the resulting increased movement of logs was discussed with the Atlantic Coast Line. Mr. Scanlon and myself, before making these enlargements, discussed with Mr. Murchison, general superintendent, and Mr. Page, superintendent of transportation of the Coast Line at Jacksonville, the question of hauling this additional [fol. 881] timber from Perry. We went thoroughly into the matter with these gentlemen and discussed with them the facilities of the Coast Line to handle this additional move-

ment. We were assured by these gentlemen that we would receive the same class and character of service from Perry as we were receiving from Carbur. We were led to believe, at this conference, the additional movement would not in any way affect our existing arrangement for the handling of the logs and that the movement from Perry would be handled similar to that from Carbur. We most certainly would not have made these investments had we not then felt that the then existing log rates would be maintained. I am familiar in a general way with the character of freight traffic on the line from Perry to Newberry. In my opinion the greater part of the tonnage consists of the movement of logs, lumber, naval stores products and supplies, all of which are incidental to the lumber industry.

The last tabulation in October of last year shows that we had 726 employees at Eastport. This number varies slightly from time to time. Our tabulation of Scanlon and Carbur, made at the time we checked up the Eastport employes, showed that we had 263 then at Carbur, and 347 on the payroll at Scanlon, making a total of 610 at these two points. This means a total of employees at the mills and [fol. 882] logging camps of 1,336 men.

We own the town site at Eastport. We own the houses situated in the town site (Tes. p. 734). These houses are occupied by men at Eastport exclusively employed in our mill. The employes pay a nominal rent and we furnish them light and water and keep the property in repair. We own all the houses at Scanlon that are occupied by our employees. We furnish them their house rent free at that point. We own the houses at the Carbur log camp. These are occupied by the employees exclusively. On all but what we term permanent houses the rent is given to our employees without charge; and on permanent houses at Carbur we collect a nominal rent. To the tenants of the permanent houses we furnish light and water free (Tes. p. 735).

There are no circumstances which now exist or which, so far as I can judge, will exist, that will cause or enable substantial shipments or movements of logs from Florida to Georgia. The supply of commercial stands of timber in Florida are owned and manufactured by lumber companies who have long since built and are operating mills of large capacity in Florida, and are balanced with the amount of

timber owned. There is no available timber in any commercial quantity that could be acquired. It would be necessary to purchase the timber from one of those now operating, which would necessarily mean the purchase of the mills along with the timber. It would seem improbable that such a purchaser would dismantle or dispose of a mill in Florida which he had already bought, and build a new one at some [fol. 883] other location in Georgia. Suppose, for any reason, one or more of the existing mills in Florida were to cease manufacturing, or that the owner of the Florida mill and the timber supplying this mill, which is situate- in Florida, would be willing to sell his timber lands without disposing of the mill, a Georgia lumber man would, in my opinion, build a mill in the Florida timber, the capacity of which would be governed entirely by the quantity of timber acquired, because there must be a balanced relationship to conduct a profitable operation; otherwise, the expense of carrying the timber, in the way of interest and taxes, would necessarily make the marketing of the lumber unprofitable, unless it were worked out on an economical relationship. In the event our company was willing to sell its remaining uncut timber without disposing of its existing mill, any purchaser, to manufacture this timber, would have to invest at least as much or more as our present mills cost, and at least equal in their capacity. As to the location of a mill of the size that I have described, if Georgia interests did acquire a commercial stand of timber in Florida, in my opinion, no lumber man financially able to purchase a tract of that size would give any thought to locating a mill at any Georgia point under these circumstances. He would necessarily locate it in the timber. I know of no such tract situated in north Florida near the Georgia line not owned by Florida operators (Tes. p. 537). We have a timber buyer who has been in the field for the past seven years, [fol. 884] endeavoring to purchase timber in north Florida. Based on his information and reports, we know of no such tract. He is our regular cruiser, W. E. McCain. He has reported his activities over the period that he has been in our employ. His reports do not disclose any timber of any commercial stands situated in the counties of Lyon, Wakulla, Jefferson, Madison, Taylor, Hamilton, Suwanee, Lafayette, Dixie, Columbia, Gilchrist, Union, and Baker, except that

already owned by Florida operators and being manufactured by them. As a lumber operator of long experience, I certainly would not locate and construct a mill at an interior point in Georgia to which your log supply would have to be hauled by rail over a distance of 150 to 170 miles (Tes. p. 738). It doesn't matter whether the existing interstate rate between Florida and Georgia points, or the existing Cummer scale is in effect. We would not haul logs from one hundred and fifty to one hundred and seventy miles under present Florida intrastate rate, due to the fact that the cost of transporting the logs under the present intrastate rate is greater than any saving that might be occasioned by any advantage in the outbound freight rate on various products. Therefore it is evident that it is distinctly to the advantage of the owner of the timber to locate his mill at the timber. There are other practical reasons why it is beneficial to have a mill located at the timber. The item of logging would be materially reduced, in the way of lesser amount of tracks to be built, lighter con-
[fol. 885] struction, lighter equipment, less equipment required, closer supervision, better control of the daily requirements, and less labor—in fact, much cheaper than the requirements in building tracks, using heavy equipment in the way of locomotives and machinery to load cars that will pass the minimum weight required by the Atlantic Coast Line, and the necessity of having additional equipment, entailing additional investment to provide regularity in the delivery of full tonnage for the main line railway. I am now speaking of the present method of handling timber from our tract by the Atlantic Coast Line to our Eastport mill. There are further reasons why it would be more practical to operate our timber tract by a mill in the woods. There are many other economies in being located in the woods, so far as logging supply is concerned, which constitutes a large part of the total cost of producing lumber. I could discuss these various operating expenses at greater length, but when I had finished I would have said no more than in the beginning, that is—any practical lumber man would give no serious thought to the acquisition of timber lands in Florida, where they are now located, and attempt to conduct his mill operations in the State of Georgia. There is no available commercial supply of timber in the State of Florida not

already owned by Florida operators and being manufactured by them, that can be logged and hauled over the Atlantic Coast Line from the State of Florida into the State [fol. 886] of Georgia for manufacturing by some mill in the State of Georgia.

"Q. Then, as I understand from you, there is no available commercial supply of timber in the State of Florida not already owned by Florida operators and being manufactured by them, that can be logged and hauled over the Atlantic Coast Line from the State of Florida into the State of Georgia for manufacturing by some mill in the State of Georgia?"

"A. There is not."

"Q. Now, Mr. Foley, it is natural to inquire why, in view of all you have said, it is a fact that there are lumber mills in the vicinity of Jacksonville and Palatka which are transporting logs by railroad under the Cummer scale comparatively long distances, and why, if they can do that, a mill in Georgia could not do likewise if it had the Cummer scale from Georgia to Florida" (Tes. p. 740).

"A. It is true that there are mills in Eastport, Jacksonville and Palatka hauling logs on the Coast Line a considerable distance under the Cummer scale. This is due to [fol. 887] the fact that the mills are already in existence at these points, namely, Jacksonville, Eastport and Palatka. The mills have been constructed a considerable length of time, and were so constructed at a time when conditions were entirely dissimilar to those now in existence. Large amounts of money have been invested in these existing plants. Now, as to explaining why such investments were made, and have been continued, notwithstanding the disadvantages of being located so far away from the sources of timber supply, I emphasize, first, the location of those Florida mills at tidewater. That means when the mills were constructed at tidewater there was cheaper water transportation as well as cheaper rail transportation than now exists for the outbound products available. That circumstance was so important that we acquired, and still own, our water carriage facilities. The directions of movement were, at that time, more particularly eastward and the bulk of the business going that way. There was also a different

system of outbound rail freight rates applicable from Jacksonville on rail movements of lumber than now prevails. That entered into the matter. There was also, at that time, a different labor situation, which made it less disadvantageous to be located from the timber supply. Those conditions have all changed in recent years. The water transportation costs have not only materially advanced, but very much out of proportion. The outbound railroad rates from Jacksonville have been advanced more comparatively than the rates paid by many of our important competitors in the [fol. 888] interior of Florida."

"Q. Then why do you continue to operate at tidewater?"

"A. It is a choice of evils. Our investments are there and we can-ot voluntarily destroy them, notwithstanding the disadvantages of location. I say very frankly, in my opinion, if we were starting over again under present conditions, we most certainly would locate in the timber rather than where we are" (Tes. p. 742).

"Q. Mr. Foley, in the event the existing Cummer log scale were increased in this proceeding to the present Alabama-Georgia scale, would you still continue to operate your mills at Eastport?"

"A. No, we absolutely would not."

"Q. What would you do?"

"A. Dismantle our existing mills at Eastport, Florida, so far as it is possible to do so, and construct a new mill in our timber, using in this construction such parts of the equipment as we could from this Eastport plant."

"Q. Have you made a survey as to a possible location of mill sites in your existing timber holdings?"

We have n. some examination. We have gone into this matter and determined, or at least attempted to determine, that it is to our best interest to have a location which may be served by two or more railroads, as we would not desire in the future to place ourselves in the same predicament which we are now confronted with. Dismantling our Eastport mills and moving our mills into the woods would compel us to assume a loss of over three million dollars in connection with the movement of the mills from their present location to the woods, as well as loss of houses, churches, schools, and all other buildings, that now constitute a mod-

[fol. 889] ern town site, namely, Eastport. Eastport would be entirely dismantled if we moved our mills. There is no industry there other than that industry. If we moved to the woods we of course would have an advantage of a saving in the log freight and in the logging end (Tes. p. 743). If our mills were moved from Eastport to the woods the city of Jacksonville and vicinity and the Eastport neighborhood would lose the purchasing power of a payroll from $17,000 to $18,000 per week. It was due only to those special and peculiar circumstances that the Florida plants described were located at tidewater, in the first place, and that even now, under changed conditions, if it were not for the size of the existing investments which would have to be destroyed, it would be better and more economical to have the mills in the sources of the timber supply. I can think of no possible reason why an enterprise in Georgia should seek to acquire timber supplies in Florida and locate in the interior of Georgia on the Atlantic Coast Line. It would be disastrous if such an attempt should be made. It is not intended to say that every one of the trees in this area in Florida is owned by those companies, not at all. Some farms have a few acres of some kind of timber. While, as a general rule, the farmers would prefer not to sell their trees, there are, of course, circumstances under which they would sell the right to cut all or some part of them; but in the aggregate it would be a small quantity (Tes. pp. 744-[fol. 890] 745). The commercial situation with respect to such small tracts is that the farmer will at various times cut "blocks" or "billets," which, strictly speaking, are not logs, because they are different in dimensions. They are obtained and handled in a different way and move under different freight rates. To some extent there is a production of logs, as such, in those small tracts forming parts of the farmers' lands. It is an entirey different business. To begin with, there is no regular lay out, such as logging roads, because there is not enough timber to justify it. As a rule, these scattered splotches of timber are surrounded by timber holdings of large operating companies, and there would be no practical means of access to the railroad by the construction of logging tracks. And, in addition to that, the only practical method of utilizing timber of that kind is by putting in a small portable saw mill, which naturally in-

volves no logging operations, and consists only of moving the mill, rather than the logs, and produces only small quantities of lumber. This is the usual method employed (Tes. p. 745). In all these discussion- I have been speaking only of timber lands located on the Atlantic Coast Line and mills located on the Atlantic Coast Line in Florida and Georgia, south Georgia, and, as to the second part of your question, of course we have been discussing the matter only as it concerned so-called "West Florida," and not the southern peninsula of Florida. I have done that because I suppose nobody would suggest the possibility of such a thing as a movement of logs from the southern Peninsula [fol. 891] of Florida to any point in Georgia.

I heard the testimony of Mr. Jackson at the Valdosta hearing. I heard Mr. Jackson state on the witness stand that he had been considering the purchase of a tract of timber lying between Lake City and Jacksonville and consisting of something like 190 million feet. We had this tract of timber offered to us for several years, or brought to our attention, and maps and details and price and terms submitted in April, 1926, by Mr. Montague; he met us here in the Mason Hotel. This was in Apil, 1926. The hearing at Valdosta, I believe, was in October, 1926. Assuming that I operated a mill of ten million feet capacity per year at Valdosta, Georgia, and that I had the opportunity to buy the specific tract of timber referred to by Mr. Jackson, I would not continue to operate the Valdosta plant and transport the logs from this tract to that point, I would unquestionably locate the mill in the timber. My decision would be influenced, first, by reason of the fact that the expense incurred in connection with moving a mill of ten million feet capacity would be very small, compared to the additional freight charges which I would be compelled to pay upon the unusable portion of the logs; second, the southern Florida territory is a very profitable territory in which to market the finished product, and with a mill located in the [fol. 892] woods I would be able to compete with this traffic; whereas, if located at Valdosta, having paid a logging rate and a proportionately higher rate on the finished product, I would be at a great disadvantage in this market, namely, the Florida market. In any event, from a practical standpoint it would be impossible to log this particular tract of

timber and profitably manufacture the same with a mill having a capacity of only ten million feet annually. The minimum annual capacity of a mill that could profitably operate this 190 million feet would require a mill at least having 20 million feet capacity or larger. The list of mills that I have seen on the Atlantic Coast Line in South Georgia does not disclose a single mill having a capacity as much as 20 million feet per annum.

The officials of the Atlantic Coast Line have never at any time prior to the hearing intimated to me that they were dissatisfied with the adequacy of the log rate under the Cummer scale, either directly or indirectly. Of the adequacy of this rate we have always been led to believe, and under the strongest impression, that it was very satisfactory business to the Atlantic Coast Line Railroad (Tes. p. 748).

We had a conference with certain officials of the Atlantic Coast Line at the station in Jacksonville, in Mr. Delano's private car, on July 24, 1926. There was present Mr. Delano, Mr. C. McD. Davis, and Mr. Perrin, as I recall. The sole purpose of this interview was to discuss the rates under attack in this proceeding. None of them stated at [fol. 893] the time that the Atlantic Coast Line was dissatisfied with the then existing log rate on the Atlantic Coast Line in Florida. It is my recollection that Mr. C. McD Davis of the Coast Line stated that the position of the Coast Line at the hearing of this case would be to justify the reasonableness of the interstate rate on logs between Florida and Georgia, and to defend the present intrastate Atlantic Coast Line rates on logs by giving the historical side of the establishment of these rates (Tes. p. 749-750). At this conference Mr. Fleishel was largely the spokesman for the lumber interests represented and, as I recall it, most, if not all, of the features were discussed. None of the Atlantic Coast Line officials indicated at any time during the conference that the log rate referred to was not profitable to that line (Tes. p. 750). My understanding when I left this conference as to the position of the Atlantic Coast Line was that they would justify the situation as it stood, as per their answer to the complaint.

I recall that part of the testimony when Mr. Davies stated that to haul logs from Florida into Georgia for a specified

distance would cost him approximately $34 for a car of fifty thousand pounds as compared to a rate of $10.50 per car or fifty thousand pounds for the same distance under the Florida intrastate rate. It requires approximately 10,000 pounds of logs to produce 1,000 feet of lumber. On a $34 rate it would cost Mr. Davies $6.80 per thousand feet to ship a thousand feet of stumpage from Florida to Georgia, [fol. 894] the distances he testified to yesterday. With a rate of $10.50 per car of 50,000 pounds, as Mr. Davies testified the Florida scale was for this particular distance, a car it would cost $2.10 per thousand feet of lumber. I think Mr. Davies was correct in his statement that with the Cummer scale he would have considerable freight. He would save approximately $4.70 per thousand feet on this calculation. The general price, as I understand it, of Georgia stumpage used in manufacturing roofers is approximately one dollar per thousand feet. It is a very low quality of timber. We have timber offered us for pine stumpage in Georgia other than that used in manufacturing roofers at from three to four dollars per thousand feet. The north Florida pine stumpage runs from seven to eight dollars a thousand (Tes. p. 752). With these prices existing then, as a matter of fact, I don't think Mr. Davies would be benefited if the Florida intrastate were made interstate from Florida to Georgia. The cost of Florida stumpage, plus the freight, even under the Cummer scale, would bring his cost of logs higher than the Florida price of stumpage—or the Georgia price of stumpage, plus the lowest rate, the highest rate.

I am experienced with the cost of logging cypress timber. We have a connection with a Cypress company from which we are familiar with that logging cost of operation. There is very much difference between the cost of logging cypress and pine. Cypress usually grows in swamps and requires very heavy construction of grades—railroad—and runs substantially double the cost of logging pine. The cost of [fol. 895] logging cypress is practically double the cost of logging pine. It would be almost impracticable to log a small stand of cypress, because the method of getting it out is so expensive that you would have to have sufficient quantities to justify building a track to it (Tes. p. 753-754).

We cut 100 million feet per annum. We market our timber and plank in the open market, the Seaboard ports. That pine timber is 6 x 6, 8 x 8, and 10 x 12, large structural. The flooring, ceiling, siding, and finish, is marked substantially in Florida. The real competition we have to meet in the eastern markets is the yellow pine mills in the southwest and the Pacific Coast lumber commonly known as fir.

As to whether we meet competition from the Georgia mills in the eastern market—we don't make the class of lumber that the Georgia mills make (Tes. p. 754). I think the Georgia mills ship some flooring to the eastern markets, the finished product, but they don't ship any timber that I know of in the eastern markets. I never hear of the Georgia mill products in the eastern market.

It is an established fact that when a saw mill cuts its available timber it must either shut down or acquire additional holdings. In the event that additional timber cannot be acquired then the only alternative is to shut down. That is the only possible thing they can do. As to the testimony offered with regard to a great many of the Georgia mills being compelled to shut down, due to a lack of timber supply, that condition also exists in the State of Florida. We have had several large tracts of timber offered us in south [fol. 896] Georgia. It is a fact that mills in Florida have been compelled to shut down when they cut out their available supply of timber (Tes. p. 755). The operators on the south Georgia branch of the Coast Line that have been operating for any period I should think would be deemed practical operators. If they could acquire timber even though their present holdings were about cut out, I should think that they would purchase that timber and continue to manufacture if they wanted to remain in the saw mill business. The inference was made in yesterday's testimony that these particular south Georgia saw mills were about cut out, or practically cut out, and would have to have additional timber; also that there was no additional timber available in Georgia; and for that reason these mills wished to come to Florida and purchase timber and haul it to Georgia, and would do so in the event rates were equalized. I think there is available timber in South Georgia. We have had timber offered us; some we have investigated. That is adjacent to the Coast Line. One lot substantially of 200

million feet (Tes. p. 756). I understand it is true that there is a tract of timber situated in Thomas County, Georgia, within fifty to seventy-five miles of the larger portion of the mills in south Georgia on the Coast Line that is not now being manufactured and not owned by any manufacturer or lumber operator. I have heard the amount in this tract put as high as 400 million feet. Yes, there is a substantial amount of timber on the market in south Georgia. Some [fol. 897] of this is the second growth. Then we have, I think, one tract offered us of original growth yellow pine timber. There is a little bit of cypress in there, but substantially all is pine. I have with me the offers made. One of them was in Clinch and Echols county that I looked at myself with our Mr. Cain. We have another tract near Allenhurst that we sent a man up to look at, as I recall (Tes. p. 757).

Cross-examination.

(By Mr. Perry:)

The 400 million feet I speak of in Thomas County is original growth. We didn't buy that because we weren't at the time prepared to bring it to Eastport and we had not considered building any additional mills. The cost of freight rate from Georgia into Florida on that timber, as compared with the Florida rate would be an item of consideration if we decided to manufacture it in Florida. I wouldn't say I would not buy it up there as long as I could get all of the timber I needed in Florida, on account of the freight rate; we might want to manufacture it in Georgia and build a mill there. We had not fully decided that.

"Q. You could not buy it at Thomasville, as a practical and economical proposition, and ship it to Florida as long as you could get available logs in Florida, on account of the freight rate?"

"A. No, I wouldn't say that; we had not gone into that feature" (Tes. p. 758).

"Q. Well, is it or not true you would not buy it in Georgia [fol. 898] and ship it to Florida as long as you can get logs in Florida on a much less freight rate?"

"A. It would undoubtedly be better to manuafcture it in Georgia."

"Q. You could not buy it in Georgia and ship it down here?"

"A. I haven't figured the freight rate; I don't know."

"Q. How many million feet of timber that you consider merchantable do you have on this four hundred and sixty thousand acres of land, did you say?"

"A. We have a little over a billion feet."

"Q. A billion feet yet to cut?"

"A. Yes, sir."

"Q. It is your view that if the Georgia manufacturer wants to participate in the manufacture of lumber out of logs drawn from Florida that he should move to Florida?"

"A. That is the economic way to manufacture, yes, sir."

"Q. He cannot ship them into Georgia, manufacture them into lumber and compete with the Florida manufacturer, can he?"

"A. It would not be the economical way to manufacture to haul the log into Georgia."

"Q. Yes, but the question is, he cannot ship them into Georgia—buy the logs in Florida, ship them into Georgia and manufacture them, in competition with the Florida manufacturer, can he, without absorbing or charging off to loss the difference in the freight rate?"

"A. Well, I don't think he could. It would not be economical to do so" (Tes. pp. 759, 760).

[fol. 899] I said the largest mill I knew of in Georgia cuts eighteen million feet per year. That is about 60,000 feet a day. That is on this list, I examined that at Albany—Reynolds Brothers Lumber Company; they had a million and a half a month. There was another mill at that time. That mill of Jackson Brothers is of ten million capacity. Now later I was asked if there was a mill of larger capacity and I mentioned this of eighteen million (Tes. p. 760).

The cost of moving our mills into the woods or incident thereto, would be over three million dollars. We would still have some of our machinery but a good part of the saw mill construction would be lost; that is, the foundation. [fol. 900] Many pieces are all right where they are, but when you take them out you have got to replace them. The total investment is in the neighborhood of two and a half million dollars, and it would cost three million dollars to

move a property valued at two and a half million dollars. The chief expense is not building new foundations. I only mentioned it as incidental. As to what else there would be—you have got fifteen months' cessation of operations, idle; you would lose your possible earnings; you would lose interest on your entire investment; you would lose the investment in your standing timber which was idle—your taxes, your overhead (Tes. p. 761). I estimate it at 15 months to dismantle and rebuild at the other plant. The chief loss would be in the interest, taxes, overhead, dismantling, freight on the stuff down to the new location, rebuilding and replacing, loss of the rate—the depreciation and the loss of the earnings during that period. You would lose the interest on the entire investment and in the meantime you are paying taxes on it. Well you would lose interest on the entire timber investment that is lying idle. I am satisfied it would cost me a loss of three million dollars to move a plant of the approximate value of two and a half million dollars; yes, sir (Tes. p. 762).

Eastport is twelve miles east of Jacksonville on the St. Johns river.

"Q. Are you going to move your property to the woods anyhow, regardless of the outcome of this rate adjustment?"

"A. No, sir, we have not reached any decision yet."

[fol. 901] As to whether I disagree with Mr. Fleishel that it is proper to do that as an economic proposition, we have an entirely different economic proposition from Mr. Fleishel. It differs in that we have an investment in a township, docks, and railroads. His pine mill is leased. He leases from the Cummer Lumber Company; he would not lose his investment because he can step out into a new location. I consider as an economical proposition it is desirable for Mr. [fol. 902] Fleishel's interests to move to the interior if the present scale of rates are to be maintained; I certainly do. They have no investment in mills that manufacture yellow pine at Jacksonville; it is leased. We are different; we have a town site (Tes. p. 763). So the question then of equalization of rates, intrastate Florida and interstate Georgia-Florida, is, I think, immaterial to Mr. Fleishel, if

he is going to move. I think he so stated; it did not matter to him under the interstate rate. But it is of great concern to me; undoubtedly so.

The cruiser that is going to testify is still in our employ. He has been at this location practically seven years. And it is on his inspection that I base my conclusion that there is no available timber in north Florida accessible to the Georgia mills. We have other cruisers at various times but Mr. McCain is constantly in our employ (Tes. p. 764). They are working north Florida and south Georgia; all in through there, that territory. When I stated that there are desirable tracts of land within 75 miles of Valdosta and Climax I did not give any distances; I spoke of several tracts of timber in Georgia. That was one particular tract within 75 miles of Valdosta. These particular tracts I was speaking of were in Georgia.

The percentages of our business that moves by water and by rail run yearly between 30 and 35 per cent by water and 60 to 65 per cent by rail. I am referring to outbound lumber manufactured at Eastport.

As to whether I stated sometime ago I was already hunting another location to carry our mill to, I stated we had investigated a location to carry our mill to. We are unde- [fol. 903] cided as to whether to change the location of our mill regardless of the rate adjustment. We are going to stay where we are if the same rate is maintained. We cannot help it; we have got a terrific investment there and we can't lose it (Tes. pp. 765-76[redacted] It is not desirable to move, regardless of the rate, on account of our investment; but if we had it to do over again, we would. When I stated that I had already, due to the condition that we are facing, been looking for a new location, I was referring to the possibility of a change in this rate.

"Q. You stated also that if there were to be a change in the freight rate, taking away from you this so-called Cummer scale, that you would just have to cease operation, particularly at the location you are at. Could you or not then move—eliminating this cost of relocating your property—could you or not move your property to the woods and operate at a profit?"

"A. We couldn't move our property to the woods without absorbing that loss, in any event."

"Q. Just forget the loss for a moment. You could move your property to the woods there to compete and meet the competition of the other fellow similarly situated?"

"A. If we were building a mill without an investment, yes, sir" (Tes. pp. 766-767).

I should think that all the timber in Florida, as a matter of course, will eventually be manufactured into lumber that is now owned by these different enterprises, regardless of the freight rate. There is no commercial stand of timber in north Florida, that I know of. The stumpage in Florida is much higher than the stumpage in Georgia. The Florida stumpage is seven to eight dollars per thousand feet. The Georgia stumpage runs from one to four dollars, according to quality (Tes. p. 767). As to whether I am comparing vir-
[fol. 904] gin timber in Florida with second growth in Georgia—the lower price would be largely second growth in Georgia. The original growth in Georgia is still lower in
[fol. 905] price than the Florida price for original growth. There would be a saving to Mr. Davies at Climax, Georgia, of $4.70 per thousand if he had the Cummer scale extended into Georgia—I took his own calculation yesterday, yes. Three or four dollars per thousand is considered a fair profit on manufactured pine lumber, everything considered. This saving that Mr. Davies would make if the Cummer scale were to be extended into Georgia would give him a reasonable profit on the manufacture of lumber alone, if he could save that.

"Q. Well, you say he would save that much if the Cummer scale were extended into Georgia?"

"Mr. Rutherford: Mr. Perry, you mean that that is the difference between the interstate scale and the Cummer scale?"

"Mr. Perry: In other words, that is what I meant."

"Mr. Rutherford: Well, that wouldn't be a saving if I understand your question."

"The question is, Mr. Foley, if Mr. Davies should acquire logs in Florida today and pay the interstate rate, and if he were given the opportunity of paying the Cummer scale extended Florida into Georgia, he would have an advantage

of four dollars and seventy cents per thousand on the manufactured lumber, compared to what he would have under the interstate rate. That is what you said?''

''A. The difference in the saving, according to the thirty-four dollars and ten dollars and a half car, I compute as a difference of four dollars and seventy cents a thousand.''

''Q. Yes, sir.''

''A. That was on his calculation'' (Tes. pp. 768-769).

''Q. So that is what he would lose——

Mr. Cassidy: Mr. Perry, just for clarity, please——

''Q. —one compared with the other?''

''Exam. Brown: Mr. Cassidy?''

[fol. 906] ''Mr. Cassidy: I just wanted to ask Mr. Perry if he would include in that the cost of logging that Mr. Davies would have to pay over in Florida? Were you assuming that it does not cost anything to get the logs to the railroad?''

''Mr. Perry: No, sir; I am dealing with the freight rate alone.''

''Q. I am assuming, Mr. Witness, that the relative cost and everything else is the same; but between the interstate rate Florida to Georgia and the Florida rate there is a difference of four dollars and seventy cents saved by having the Cummer scale extended into Georgia.''

''A. The calculation of ten dollars and fifty cents, and thirty-four dollars, a car, shows a difference——''

''Q. Which is four dollars and seventy cents?''

''A. Yes'' (Tes. pp. 768-769).

There is practically no roofers manufactured in Florida termed ''roofers''; they are practically all manufactured in Georgia. We do not come into competition with that. We ship into Florida and into south Florida particularly, yes, sir. The Georgia manufacturers ship some into Florida [fol. 907] also. To meet competition with us on this Florida business they would have to absorb the difference in freight rate, where it is higher than ours (Tes. p. 770) if they marketed in that same location, yes. And if they pay a higher rate on logs into the mill than we pay into our mill, that has to be absorbed also to compete with this

Florida business. Figured on Florida, whatever their cost may be. He has to stand whatever the lumber costs him [fol. 908] (Tes. pp. 771-772). He has to stand what the freight is as a part of the cost, certainly.

"Q. Why, of course. Then, if the Florida manufacturer has a lower rate on logs than the Georgia manufacturer for the same distance, the Georgia manufacturer is at a handicap for that difference and has got to absorb it, hasn't he?"

"A. No, sir, that is not true."

"Q. Tell us why isn't it true?"

"A. The Georgia manufacturer to start with, has a lower value on stumpage than a competitor in Florida——"

"Q. You are getting your logs in Florida, of course?"

"A. Yes."

"Q. And if the Georgia man got his logs from Florida wouldn't he pay the same rate?"

"A. Yes."

"Q. Well, then, wouldn't he be at a disadvantage in paying a higher freight rate than you paid?"

"A. If he undertook to market in the same markets."

"Q. Yes. Well, he is marketing in the same market, to a degree, that the Florida manufacturer is?"

"A. The Georgia manufacturer usually markets in his own market, which is Georgia."

"Q. He is entitled to sell his product anywhere he wants to, isn't he?"

"A. Oh, absolutely, without a doubt."

"Q. And then if he is to be put on an equality with you, either he has got to have the same freight rate that you have, or he has got to absorb the difference, whatever it is, higher or lower—I mean the difference is in Florida as compared to Georgia; isn't that true?"

"A. He has got to stand whatever it costs him to produce lumber, however he does it."

[fol. 909] I stated that I was in competition with lumber shippers from the west. I feel foreign competition of imported lumber also. There is indirectly several lumber importers (Tes. p. 773). We don't consider that so important yet, but it is becoming to an extent that we might have to take notice of it. The western distributor predominates and makes the market in the eastern market. We are meet-

ing their competition, rather than they meeting ours. Of the sixty-five per cent of our shipments that move by rail, practically none of those shipments move to points served [fol. 910] by water carriers. In other words, all of our rail shipments are to interior points, with this explanation; we ship, of course, a great deal to Miami and to West Palm Beach; but I wouldn't consider that that would be classed as a water shipment (Tes. p. 774). The greater part of that 65 per cent moves into Florida under normal conditions; I would say at least 50 per cent of the total, which would leave 15 per cent of it which moves to Georgia and other territory. The other 15 per cent will move into north Georgia, North and South Carolina, and a little into Virginia.

The 35 per cent of our traffic that moves by water is delivered from Baltimore to Portland, Maine. None of this 35 per cent goes to the Florida ports. I testified that three or four dollars profit is a reasonable profit per thousand on lumber. As to whether or not that is our present measure of profit under this Cummer scale, there isn't any profit at the present time under the Cummer scale on the present market.

Redirect examination.

(By Mr. Rutherford:)

As to interest on our entire investment over a fifteen months period, the timber investment alone is $450,000 for fifteen months. I am not interested in the existing interstate rate from Georgia to Florida. It makes no diffeernce, none whatever, to me what that rate is. We would not have the slightest objection one way or the other to seeing the existing Cummer scale that is existing in Florida put in on the interstate business from Florida to Georgia (Tes. p. 776). We are not concerned in it. It would not harm us in the least.

[fol. 911] As a matter of fact, I should say it is not possible for any Georgia operator to buy timber in commercial quantities in north Florida.

If it were to be the outcome of this case that we were compelled to take such a loss and cease operating under

the Cummer log rate scale entirely and we were then to relocate in the woods, and if there was then any competition between us and the Georgia manufacturer, we would be in a decidely better position to compete with him than we are now. From that aspect of it, then, aside from the movement which might ensue and which would cause a loss of three million dollars, the Georgia manufacturer would be decidedly in a worse position than he is now if he competes with our mill. If he does not compete then he gets no further benefit. That is true (Tes. pp. 777-778). We are not making a profit at present. That is not peculiar to our plant; it is a general condition.

Recross-examination.

(By Mr. Perry:)

The rate of interest I figure on when I estimate the interest for 15 months on our timber is six per cent. I did not say that about 50 per cent of our output is flooring. I can't give you the per cent in flooring, but 65 per cent of our product is in the form of ceiling, flooring, siding, finished (Tes. p. 778). And the other 35 per cent is dimension timber, six by six, eight by eight, ten by ten, and twelve by twelve. As to whether any other material that we manu- [fol. 912] facture, other than the structural lumber of heavy timbers, finds its market in part of Florida, Florida is our logical market and we market substantially all of that class of lumber in Florida. This is 65 per cent of the entire output, I think. Occasionally we find a market for some of our lumber in Georgia and we market some of that class of lumber in Georgia and South Carolina and some in Virginia.

My understanding is that the mills of the Hebbard Cypress Company at Hebbardville and Hopkins, Georgia, on the Waycross & Southern Railroad, connected with the Coast Line at Waycross, have cut out that timber and are no longer operating. That is my understanding (Tes. pp. 779-780).

(Witness excused).

E. W. SCHERER was thereupon called as a witness and, having been duly sworn, testified as follows:

(Intervenors' Exhibits Nos. 41, 42 and 43, witness Scherer, were marked for identification.)

Direct examination.

(By Mr. Rutherford:)

My name is E. W. S-herer: I reside in Jacksonville, Florida, and I am employed by the Brooks-Scanlon Corporation, in charge of their land and timber, tax and assessment matters, townsite records and insurance, and supervise the records pertaining to the movement of our logs and log receipts at Eastport, and the logging and production account-[fol. 913] ing (Tes. p. 781). I have been connected with the Brooks-Scanlon Corporation at Eastport since 1920. Prior to that time I was employed by the Brooks-Scanlon Company at Kentwood, Louisiana. My employment there started in 1908, and I have since been identified continuously with the Brooks-Scanlon interests with the exception of about two and a half years. I have prepared a statement showing the uncut timber of the Brooks-Scanlon Corporation available to the plant at Eastport, Florida. This statement was taken from our land and timber record. I made it up myself and it is based upon the original cruise of the timber made at the time or prior to the time the timber was purchased. This statement has been marked for identification as exhibit No. 41. The exhibit is practically self-explanatory, but I wish to call attention to these figures. It shows, by township and range, our cruiser's estimate on pine and cypress timber owned by the Brooks-Scanlon Corporation and available to the plant at Eastport as of August 31, 1926. The exhibit shows that when logged, the pine and cypress timber will be equivalent to approximately 186,800 carloads of logs, and at the present prevailing freight rate, per car, this will produce a revenue of $3,922,800 to the Atlantic Coast Line, if logged and transported to Eastport.

I have prepared a statement showing the log shipments and freight paid on same from Carbur and Perry to Eastport, Florida, for the years 1915 to 1926, inclusive. This

exhibit is marked for identification as No. 42 (Tes. p. 783). [fol. 914] The statement shows, by years and the aggregate for the period, the number of cars received at Eastport, board feet transported, freight charges paid, the average freight paid per car and per thousand feet, and the average number of board fet transported per car. This statement is also practically self-explanatory, but I wish to call attention to the substantial increase in the number of board feet transported per car in 1924, 1925 and 1926, as compared to 1919, this increase averaging aproximately 25 per cent. In column four, under the item of "Freight" is shown the amount of freight paid to the Atlantic Coast Line Railroad only covering the shipments of logs originating at Carbur and Scanlon. There is no freight or transportation cost included in this item covering the movement of the logs from Scanlon to Perry; in other words, that is the freight paid to the Atlantic Coast Line Railroad from Carbur and Perry, but it includes the logs originating at Scanlon.

"Q. Please refer to the first page of the exhibit headed "Summary property investment of Brooks-Scanlon Corporation," and under this summary state what is the significance of the columns headed "Dec. 31st, 1922," and "Additional Investment."

A. The purpose of so dividing the investment is primarily to show the additional investment made subsequent to December 31, 1922, as a direct result of the purchase of the additional timber in the vicinity of Perry, and the resulting increase in capacity at the logging camps and at [fol. 915] Eastport in the ways of mills, plant facilities and so forth, as referred to in Mr. Foley's testimony."

I merely wish to call attention to the columns referred to; under the column headed "Dec. 31st, 1922," we show a total investment of $1,976,757.69; and under "Additional Investment" referred to above, $1,621,483.91—almost one hundred per cent increase of our investment. This investment does not include our timber purchases. In order to take care of the purchase of timber in the vicinity of Perry, the Brooks Scanlon Corporation actually increased its total investment substantially $1,600,000. The total investment as of August 31, 1926, $3,598,241.60 represents

the actual cash investment in our plant and equipment but does not include our investment in timber and land (Tes. p. 785).

(Thereupon Intervenors' Exhibits 41 to 43, inclusive, were received in evidence.)

The property investment of the Brooks Scanlon Corporation in timber and land is as follows: The company owns approximately 400,000 acres of land and something over a billion feet of timber. The value of the land and timber owned by the company at this time is something over seven million dollars. It is practically all timber, because we have our land set up on our books at a nominal value of one dollar per acre (Tes. p. 786).

[fol. 916] Cross-examination.

(By Mr. Perry:)

The value of the timber is arrived at at the present price and not the cost. This timber was acquired, I think, as related in Mr. Fleishel's testimony, and in Mr. Foley's testimony he related the acquisition of this substantial body west of Perry in 1922. The question of any change in freight rates, one way or the other, I think is not going to have anything to do with the value of our land and timber.

As to my Exhibit 42, under column "Average Freight per car," for 1926, $21.34 per car, the quantity of logs coming from Carbur and the quantity originating at Scanlon and shipped from Perry is practically the same. The Carbur distance is 145 miles, and it is my understanding that Perry is 15 or 16 miles further. That is substantially 145 and 161 miles. The movement is from substantially the same territory. There is very little difference. My recollection is, my memory serves me right, Scanlon is fifty and a fraction from Carbur and forty nine and a fraction from Perry. In utilizing the timber that we have, I don't think the distance would be increased over the distance we hauled last year. It is my impression that the stands of timber that we have now will move substantially over this same route, and about the same distance. In 1921 we have an average "Freight per Car" of $22.85; then in 1925 it runs down to $20.70. Then an increase,

slight, of 64 cents, in 1926 over 1925. That variation re-
[fol. 917] sults from the way we load our cars. It is the weight. If we load a heavier car the revenue per car is greater (Tes. p. 788).

Redirect examination.

(By Mr. Cotterill:)

It was in the year 1922 that there was a general reduction in freight rates amounting to ten per cent. I haven't that before me, but I would judge from the drop in the average-per-car that that probably was the time. It is a natural conclusion from my statement that in reality our loading increased in years subsequent to the rate reduction. My answer took into consideration the 10 per cent reduction in rates in 1922. My answer referred principally to this last year, because in 1925 and 1926 we operated under that same rate, and the increase in 1926 was due to the heavier loading; but in the prior years the reduction in rate enters into it (Tes. p. 790).

[fol. 918] L. C. Crockett was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Cotterill:)

My name is L. C. Crockett; Jacksonville, Florida. I am, and for a number of years past have been, engaged as forest enginer and timber cruiser; such work involves estimating standing timber, both as to quantity and quality, mapping given areas, giving advice as to feasibility and probable cost of logging, and in short it may be said that my work is the equivalent of general consultant respecting lumber operations (Tes. p. 790). My services are available as a consultant generally. My experience has extended over a period of seven to eighteen years in Florida, in addition to which I have also spent approximately four years on the Pacific Coast, and have made special investigations in Latin-American countries. I have on a num-

ber of occasions been employed, and am always available for employment, for Georgia interests. It can fairly be said that nearly all the desirable timber in Georgia has been cut out, there being left, with few exceptions, only comparatively small and scattered areas of timber sections. Much of that is second growth and low-grade stumpage and is being utilized more particularly by small or so-called roofer manufacturers. As to Florida, confining the statement to what may be called north and west Florida, and certainly so far as concerns areas served by the Atlantic Coast Line Ralroad north of Palatka, the same gen-
[fol. 919] eral situation as to the cutting out of timber prevails. The only remaining uncut timber in commercial volume belongs to, and it is being cut out by, the large lumber mills in Florida owned by Brooks-Scanlon Corporation and their associates, Burton Swartz Cypress Company of Florida, the Putnam Lumber Company, the Standard Lumber Company, Wilson Cypress Company, Weaver-Loughbridge Lumber Company, Southern Saw Mills Company, Tallahassee Lumber Company, Hampton Lumber Company, Wilson, Otwell & Cone, Cummer Cypress Company, and possibly several others. I have prepared personally a map on which is shown the northern portion of Florida, with county divisions, the line of the Atlantic Coast Line Railroad therein, and its lines in Georgia.

(The map was marked for identification as "Intervenors' Exhibit No. 44, witness Crockett," and was received in evidence. Tes. p. 792.)

I have personally cruised timber in every county in Florida shown on such map, with the possible exception of Suwanee County. I have also made numerous individual and special investigations throughout the whole area. A commercial quantity of timber I would say would be any volume that could be properly operated under any method so that a return could be made to the operator. There would be no minimum amount of feet; any amount that could be handled at a profit. When I say there is no commercial timber, other than comparatively small and scattered areas left uncut, I mean by that statement to con-
[fol. 920] clude the possibility of utilizing any timber in a commercial sense as I have defined it then in that area,

except under special methods (Tes. p. 793). I will now indicate the area in which standing timber in commercial quantities exists. It will be noticed down near the lower left hand part of the map that an area has been marked out in dotted lines. I have put such marks on that map to indicate where such standing timber now is. It will be noticed that the line begins practically at the mouth of the Suwanee River on the Gulf of Mexico and extends northward into Lafayette County and thence again northward through the southern portion of Madison County, westward through the southern portion of Jefferson County into the southeast corner of Leon County, and then southward to the Gulf through Wakulla. It is in that area, and none other in the northern portion of Florida, that the standing timber in commercial quantities is to be found, with one exception; that exception has been marked on the map in circular form with dash lines, and is the tract known to all lumber men as the Epinger-Russell Company tract, which is southeastward of Lake City, Florida. I will speak of such tract later on and in more detail and in another connection. I know of my own personal knowledge the areas I have shown on such map are the only ones accessible to the Atlantic Coast Line Railroad in the northern portion of the State of Florida, where standing timber is now to be found in commercial quantities, as I [fol. 921] have defined that term. That is the situation. It will be noticed that outside of those areas I have shown the character of the country as consisting of farms and cut-over areas. All the timber in the large timber areas which I have shown with the dotted lines, is now owned by and is being cut by existing Florida lumber operators (Tes. p. 795). That is the situation; all of such timber in that large area is closely held by existing companies which have their own mills in Florida. They absolutely control all that situation in there. There has been a flock of little mills that have been in that territory who cut out everything they can pick up, and everything that is left in there will either be operated by the existing companies or left per se. If any person in or from the State of Georgia should undertake to acquire timber in Florida accessible to the Atlantic Coast Line Railroad, in the areas I have shown, it will be necessary to purchase it from one or the

other of the existing Florida lumber companies. The possibility of any person purchasing any of such standing timber now being cut by the Florida mills without purchasing the mill and logging equipment along with the timber is impossible to imagine. The output in volume of a mill, the type of mill and the logging equipment are controlled by the volume of standing timber, the species of same, the physical conditions in the woods as to logging. If an operator in Florida were to sell his timber, unless he had another supply of timber suitable for operation of the mill, he would be forced to junk his mill. Therefore I say it is beyond the bounds of reason to suppose the possi- [fol. 922] bility that a Florida operator would sell his timber without selling his mill. Of course, that does not exclude the possibility of selling at prohibitive prices, but such a thing would never occur. No saw mill operator considers am ain line haul on his logs to a point at a distance from his timber unless there are special and compensating circumstances. Having purchased both the Florida timber lands and the mill along with it, it is inconceivable that any situation could ever arise to cause a person to abandon the existing mill he has already bought, and construct a new one either in Georgia or any place else. Examining the map which I have introduced, it will be noticed that so far as concerns this timber area in Florida penetrated by the Atlantic Coast Line Railroad, there would have to be a considerable length of main line haul to reach any possible place of manufacture in the State of Georgia. Unless there were very considerable compensating and offsetting advantages in the form of a much lower transportation cost on outbound finished products, no person having the slightest qualification as a lumber manufacturer would consider for a moment locating or using a mill in Georgia or at any other point except in his timber; there would be absolutely no reason whatsoever in the ordinary case why such a manufacturer would undertake to pay a rail transportation cost on logs from the timber to his mill unless he had a very material freight rate advantage on the outbound [fol. 923] finished products (Tes. p. 798). The approximate proportion between the weight of logs and the weight of the finished lumber is three and one-half to one. There-

fore, it would require an outbound rate advantage of three and one-half cents per hundred pounds on lumber to offset the payment of one cent per hundred pounds rail costs on logs. A rail cost on logs equivalent to three cents per hundred pounds could not be offset at less than practically ten cents per hundred pounds on lumber shipped outbound. Therefore, it is very obvious that only under very special conditions would any practical mill man give any consideration whatsoever to the shipment of logs by main line. In addition to the transportation item which I have just described, there are other material factors which control nearly as much; the usual locations of the mills right in the timber itself; any mill at a distance from the timber, operating over a main line, unless they receive special service, like solid trainload shipments, are at a great economic disadvantage by being at times out of logs, compelling larger labor and equipment costs of sufficient amount to make it practically prohibitive and certainly very undesirable. As to what would be the most controlling circumstance which might cause a practical mill man to locate his mill some considerable distance away from his timber supply and to depend upon main line transportation of his logs, practically the most controlling reason which at any time would ordinarily make such a method of doing business possible would be location at tidewater; [fol. 924] and, of course, even under such circumstances an attractive rate on logs into the mill would be an influencing factor (Tes. p. 799). The Epinger & Russell tract which has been thoroughly covered before, is indicated on the map in Columbia, Baker and Union counties, marked by the initials E. R. tract. If such a thing were possible or had been possible as the acquisition of that tract by anybody in Georgia, at Valdosta, and it were possible to think of rail shipment of logs from such tract to Valdosta, the railroad movement would be over the Southern Railway, which splits the tract open and has a direct shoot into Valdosta, Georgia, at a distance of about seventy miles; whereas the circuitous route over the Coast Line would be about one hundred and seventy. I don't think any thinking operator or experienced operator would think of building a mill except at the timber. There would not have been any circumstance that could have prompted

an intelligent man to have paid a higher transportation cost on his logs by shipping a long haul over the Coast Line than if he had shipped via the shorter route over the Southern Railway from the same origin to the same destination; he would take the shorter haul because it would take the same equipment. As to whether it is to be understood from all that I have said that there are no trees elsewhere in the northern portion of Florida than in the two timbered areas which I have marked out on my map, there are, of course, scattered about through the territory some small patches of timber, owned perhaps by farmers and [fol. 925] in most cases reserved for personal use or to beautify the home grounds, but not in commercial qualities. There are certain methods of using that sort of timber and to some extent, in cases where it is not too far away from transportation, it is used; but practically without exception, the only means of cutting would be to work it up with portable mill and haul the timber. It would be out of the question to construct tram roads and attempt to haul logs to a main line and pay a main line charge to any mill. The costs would be prohibitive, and, in any event, impractical from an operating standpoint; in fact, even these small tracts have already been picked up and logged out.

The situation simply is that most of the south Georgia timber has been cut out. Those gentlemen cannot turn to Florida for sources of supply, unless they were to attempt to buy out completely some of the timber in Florida, which is already syndicated, along with the existing Florida mills and the equipment. There is no possibility of a commercial movement of logs from the area shown by the map to any south Georgia port. This answer, relating as it does to south Georgia operators, can also very nicely apply to Florida operators. The testimony which I am here giving is predicated upon my intimate personal knowledge of the territory, and the economic facts pertaining to the industry, as well as my long experience and special qualification as a timber expert and advisor to saw mill operators in just such situations (Tes. p. 802).

[fol. 926] I can only give an approximation of the amount of uncut timber in the territory covered by the map. That could be ascertained only by getting the figures from the

people who own the timber and the early operators; but I would say it might be in the neighborhood of two and a half or three billion feet. In the upper right hand corner of my exhibit I have shown "ownership of timber" in certain corporations. That is entirely conclusive. There is nothing else, except what is owned by these people, that can be considered. The other timber that is owned by other parties is not in commercial quantities; and a number of concerns have operated in there, cut their timber out, sold their equipment to the Taylor Lumber Company at Springdale, and are out and gone completely away; and that applies to several others in that given area. The map includes the Coast Line only. The black line in there is the Coast Line (Tes. p. 803).

Cross-examination.

(By Mr. Perry:)

I am familiar to a large degree with the available timber in Georgia as shown on the map. I have cruised timber in south Georgia counties there adjoining there shown on this map. I believe in about six of these counties; I am perhaps not familiar with one or two farther west counties, Thomas, for instance, to a certain degree. I don't believe I answered that there was comparatively no available timber for commercial purposes in south Georgia. I stated that there was, with few exceptions—there were a few ex-
[fol. 927] ceptions in south Georgia. There are one or two comparatively large tracts in south Georgia, but for the most part the country is cut out. There is about two and a half billion feet of timber uncut inside of the dotted line on the map with the operators enumerated; and that is an approximation. That is on the section or the part of the map shown inside of the line; and my figures are an approximation; I would have to verify them. That is all owned by mill people. If timber is pretty well exhausted in Georgia, the mill interests in that section have got to do one of two things, either to get their logs from other territory, or dismantle or close down their mills. If they wish to continue operating I would advise them to go to the Pacific Coast. I wouldn't advise them to come to Florida. The particular advantage in going to the Pacific Coast is because of an adequate supply of timber for a good many years to come.

I live in Jacksonville, and do this kind of work for the public generally. I spoke a while ago of the absurdity of shipping this 190 million feet of timber in the Epinger-Russell tract over any line other than the Southern, as it goes right through there. As to whether, if the rate is much lower over the Coast Line I would still ship over the Southern, I don't admit that you would ship logs to a far away point over either road, regardless of the rate (Tes. p. 805).

"Q. You said if a person wanted to use that timber, get those logs, for manufacture at Valdosta, he should ship [fol. 928] them over the Southern Railway, assuming that the operator would want to make a profit on his operation."

"A. Well, then, he wouldn't ship the logs at all."

By Mr. Perry:

"Q. The question is, if that rate were much less over the Coast Line, wouldn't you move them over the Coast Line instead of the Southern?"

The Witness: "As a supposititious case, yes, sir."

"Q. Not as a supposititious case——"

"A. Well, it is a supposititious case."

The reason why a man in Valdosta could not move logs from this Epinger-Russell tract into Valdosta, a distance of 168 miles, is because he wouldn't have the advantage of tidewater. I mean that the manufactured lumber at tidewater is worth more than it is at interior points.

"Q. Now, then, only thirty-five per cent moves by water; why wouldn't he be on equal footing with the other sixty-five per cent that moves by rail?"

"A. Well, he would be at an advantage on part of his stuff"——

"Q. This 65 per cent—twice as much?"

"A. No; there would be other offsetting disadvantages—the cost of moving the logs, which would have to be added to his cost."

As to whether or not I agree with the testimony of Mr. Fleishel that tidewater location is not so much a consideration and that he is going to move his mill into the interior territory, I think the tidewater advantage is not anywhere near what it has been; some of the advantages of tidewater

have been removed, by a reduction in the rates or an equalization with water-competitive rates, as compared with the rail haul. As to the testimony of either Mr. Foley or Mr. Scherer, to the effect that there was a substantial amount [fol. 929] of available uncut timber in south Georgia, I do not disagree with them entirely. There is some standing timber in south Georgia; for the most part it is cut-over stuff, which is about all that is available in any of the territory now; and there are a few tracts there that might be acquired. I would say there is no very substantial amount of uncut timber in south Georgia; the desirable timber for the most part in south Georgia has been cut out for a great many years and a great many mills have been cut out and discontinued operations (Tes. p. 808).

Redirect examination.

(By Mr. Cotterill:)

I would say that there is considerably more available uncut timber in south Georgia than there is in Florida. I take into consideration the tracts in south Georgia referred to by Mr. Foley and possibly one or two others that I might know of of my own knowledge. I am familiar to a certain degree with the tracts Mr. Foley described, the Dunlevie Lumber Company. I have cruised timber for the Dunlevie Lumber Company; I have worked up a map for them. As to whether these tracts are for sale, this company went into the hands of a receiver and some of the timber that they blocked up has been sold to other parties, in some cases for turpentine. Dunlevie's timber was low grade stuff for the most part—cut over areas and second growth—which I presume accounts for their ceasing operations. There is more standing timber in south Georgia than there is in north Florida, except the areas indicated on the map as being [fol. 930] timbered areas. I am not including in my statement any of the timber owned by the parties shown on this map. I am not including the Epinger & Russell tract and the other syndicated holdings (Tes. p. 809).

[fol. 931] W. E. McCain was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Cotterill:)

My name is W. E. McCain, Madison, Florida; timber cruiser for Brooks-Scanlon Corporation. I have been engaged in such work for twenty-five years, twenty years with this company and its affiliated concerns. My particular duty has been estimating and buying timber, and looking after their holdings in the State of Florida and State of Louisiana. I believe such work has made it necessary for me to familiarize myself with the conditions as to standing timber in the State of Florida, because that is what I have been doing for many years. The situation is just as Mr. Crockett has testified, except for the two areas which he has shown on his map, there is no available Coast Line timber in northern Florida in commercial quantities; there are scattered small pieces owned by settlers or farmers, which we speak of as odds and ends that he may have after his clearing has come in on his land he might own, there may be a rim or one corner that lay over next to our holdings and which we consider logically our timber which we can buy or handle; but if we fail to buy it, it is impossible for any one else to buy it and take it out because they would have to come through our holdings to get to it, and make his haul too long. If our company fails to buy these particular tracts, within our holdings, and if our tracks are taken up, then such tracts are left high and dry. There are very few [fol. 932] odds and ends in the cut-over sections. The only possible way anybody could use them would be to put in a small portable mill. Some are using Fordsons and other tractors, and probably cut for local consumption. In a commercial sense, such odds and ends would not be thought of as sources of supply for regularly established saw mills at fixed locations. It would not be possible for a mill located on the Atlantic Coast Line Railroad in Georgia to operate by depending upon such a source of supply as those odds and ends in Florida which I refer to, because the cost of moving the logs to a main line, plus the costs of a main line haul to a mill location, would be prohibitive, regardless of

the freight rates (Tes. pp. 811-812). I am basing my testimony upon intimate personal acquaintanceship with conditions all over the Atlantic Coast Line Railroad in the northern half of the State of Florida. I have actually been over these lands many times. I have literally combed this country with a fine-toothed comb, looking for just such timber; in fact, Mr. Crockett and I very recently made a personal survey of the larger part of this area to verify our previous knowledge of this condition.

"Q. Mr. McCain, you seem to have operated in this particular country for a number of years, where there were formerly tracts of commercial timber, large and small, in the northern half of Florida, other than which are now owned by the Florida operate-s in years gone by——"

"A. Yes, sir."

"Q. —ten or twenty years ago——"

"A. Yes, sir."

[fol. 933] "Q. In that area has the same thing happened which must happen in Georgia, namely, are they just cut out?"

"A. Well, they are cut out from time to time."

"Q. What has happened to the Florida mills?"

"A. That cut out this timber?"

"Q. Yes, sir."

"A. They are gone."

"Q. Closed up entirely or moved to another location?"

"A. I have got a list of thirty that has closed up and moved."

"Q. In what period of time?"

"A. The last six years."

[fol. 934] That is the common experience in the saw mill industry in any area; when you get out of timber you have got to move. I understand there was a Mr. Jackson run a *mule* on that branch south of Tallahassee somewhere there; I know where the timber was cut (Tes. p. 813). They were cut out of there and gone before my time in there. They were both large and small concerns, from 10,000 capacity to a hundred thousand daily, which have cut out and gone. I think we bought the last available tract of commercial timber in north Florida for cutting about four years ago. We bought that Irwin-O'Brien tract. That is the only one that

I know of that is worth anything (Tes. p. 814). In the period of five years preceding that time, which goes back to nine years, generally speaking, all the then available tracts of commercial timber in north Florida were being cut. Four years ago that country was full of little mills (Tes. pp. 814-815). There is a few running yet. There is in existence in Thomas County, Georgia, a fairly large and substantial quantity of timber suitable for commercial use. I did not estimate the quantity of it. I have been told it runs between three and four hundred million feet.

Cross-examination.

(By Mr. Perry:)

I don't know of any tract that has been for sale up there, referring to Florida, in the last four years; not in any quantity (Tes. p. 815). As to whether I would call "quantity," [fol. 935] one hundred million, or one hundred and fifty million feet, there ain't 100,000,000 feet of it in the whole north end of the State—there ain't a fourth of it, and hasn't been in the last four years. I just know of the recent sale of the Epinger-Russell tract up there. I had been on the tract. I knew that was for sale. I knew it had been sold recently. When I said none has been sold in the last four years I had in mind except that over there. I thought you had reference to right south of Thomasville. Well, within 170 miles of Valdosta will take that in. There is no other tract there, nowhere.

"Q. Now you say there is some that might be used for merchantable purposes except for the fact that you all have it bottled up, and for that reason you can't get into it. Are there a great many tracts like that?"

"A. I have got—pretty nearly got an estimate of every tract of timber that is left anywhere in that neighborhood where we can use."

They can use it by hauling it fifteen miles after they saw the lumber, to the railroad; there is none on the railroad. It is true that a man often, after he has got an established business, can use several small tracts when it wouldn't pay him to establish a location for one tract, where it is within a radius that he can cut it and haul it. As long as you can add to your main holdings you are better off. But you

couldn't well equip yourself for making lumber with a [fol. 936] small amount of timber. You can't haul logs on trucks over four or five miles; you have got to have a paved road even then. We have several places in our holdings where they have come in and bought these spur tracks and we bought the lumber at our holdings from them. There are small tracts here and there and bottled up, none close enough to the railroad that they could operate. All that lumber that is near the railroad that could be used by a lumber mill man has been bought and cut out.

"Q. But from your experience of a long number of years, both in south Georgia and Florida, and, forsooth, to draw logs on the Georgia and Florida line, by reason of the standing timber it is much better in south Georgia than it is in north Florida; is that your view?"

"A. Well, there is none in north Georgia—I mean north Florida, now."

"Q. I see; but, as between the two, there is a great deal more standing timber in south Georgia than in north Florida, according to your position; is that right?"

"A. In Thomas County there is some good timber."

"Q. I am talking about generally—in Lowndes County and in Ware County?"

"A. Well, all around White Springs, there is a tract up in there."

"Q. In Georgia, you mean?"

"A. In Georgia."

"Q. Well, now, as between the two, I want you to state, if you are in a position to from the opportunities that you have related here, whether or not Georgia has more available timber than north Florida?"

"A. It has" (Tes. pp. 819-820).

M. J. Scanlon was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Cotterill:)

[fol. 937] M. J. Scanlon; Minneapolis, Minnesota. I have been engaged practically all my life in the manufacture of

lumber and newsprint paper. I am an officer and director in some twenty corporations largely engaged in the manufacture of lumber and newsprint paper and the ownership of paper. We are engaged in the manufacture of lumber and newsprint paper in British Columbia, Canada, in Washington, Oregon, California, Florida, the Bahama Islands [fol. 938] and Cuba. As to the annual lumber production in all the various companies in which I am interested, I forget. We have two operations in California. Our an-ual production in the way of dealing with wood products last year was rather over seven hundred million feet. We have a potential capacity of rather near one billion feet. The reason we did not run to capacity last year was that the market was not at a profit (Tes. p. 821). I have been familiar with the economics of the lumber industry, in the Southeast particularly, and in north Florida and south Georgia for a number of years. *U* have been coming to Florida for a period of almost 30 years, investigating the timber supply, and the possibility of manufacturing it and selling it at a profit. I am the Mr. Scanlon who is in the Brooks Scanlon Corporation.

I am personally acquainted with the chairman of the board of the Atlantic Coast Line Railroad, Honorable Henry Walters. I have been intimately acquainted with him in a business way for a number of years; I wouldn't say intimately, but we have had correspondence, and I have met him on several occasions, and my last visit, the last conference I had with him, was on December 8, 1926. The object and purpose of the conference with Mr. Walters was that we have huge investments in Florida which would be largely destroyed if the present so-called Cummer rate is advanced; and I have been told by these lumber men who are also interested, and I think the former examiner in this case at Valdosta, Georgia, indicated, that the Coast Line Railroad were the plaintiffs in this case. I did not attend [fol. 939] the conference here on July 24th with Mr. Delano and his associates and these lumber men who are interested in this case; I was in Habana, Cuba, at that time, and had fully intended to be here at that conference, but my train was late, and when I arrived here on that same day, the meeting had been adjourned. Now, we had been assured repeatedly by a very prominent official on the Atlantic

Coast Line Railroad that that rate was profitable and it would be justified and maintained. And when I heard these rumors about what took place at this Valdosta hearing, I became alarmed.

I had had the assurance of these gentlemen that the rate was a profitable one and it would be maintained. And, as a matter of justice to my stockholders, I wouldn't sit idly by and see this thing go on, with the possibility of an industry in this State being destroyed. So I made an appointment with Mr. Walters, and I saw him on the afternoon of December 8th at two o'clock, and I told Mr. Walters that I had come down there personally to see him because we had been assured by his officials that this rate was a profitable one. Mr. Walters agreed absolutely that the rate was a profitable one and that he had instructed his officials not only to justify the rate, but to maintain it. He himself had personal knowledge of the character of operations under that rate. He most certainly did. Mr. Walters himself sold us a block of this timber involved in this. Mr. Walters and his associates had the naming of this rate; he was instrumental in [fol. 940] getting us to locate at Eastport, Florida, and told us so. As to Mr. Walters having familiarity at the time of this location with the operating conditions which would make the rate profitable, I assume that a man in his position must know and does know that that is true.

It is a common experience for available sources of commercial timber to be cut out in given regions, that is the history of the business. What happens is that these small operators don't usually wait to get out; they fail before they get that far along. That has been the history of the industry (Tes. p. 824). When the cuting has been completed they move somewhere else where they can find an available supply of timber if they have got the money to go along with.

"Q. Except in tidewater locations in this section of the country, has it been your observation that other lumber men, when faced with the cutting out of their own timber, have then attempted to transport logs by railroad freight for long distances."

"A. I am very well acquainted with the lumber operations of the United States, and Canada, and, as a rule, that is not the general practice and it is very seldom engaged in."

"Q. Did you hear the testimony of the previous witness, Mr. McCain?"

"A. Yes, sir."

"Q. While perhaps not as familiar with the details or the names of the companies, has it been your observation that that is just what took place in the northern portion of Florida?"

"A. Yes, sir."

So far as I am advised, all the available commercial timber in the northern portion of Florida is gone. I assume these operating companies handle their own timber and it is not for sale unless their mills and their equipment go with it (Tes. pp. 825-826).

[fol. 941] An advance in the freight rate being paid on logs to my company in Florida would compel the dismantling of the mill. It undoubtedly would. In that event, it would be necessary for us to do one of two things; we would [fol. 942] have to abandon our investments largely at Eastport, Florida, and select a new location in the woods, or sell our timber land to some other timber operator. If we located in the woods there are several points where we could very readily locate. The point where we will actually locate will depend entirely upon this proposed route of the Seaboard Air Line from down Tampa way through Perry.

If there were, in fact, any competition between our company and such of the few remaining mills in south Georgia as there are, and if, as a result of this case, we were compelled to take the loss involved in dismantling our mill and setting it up on a new location in the timber—we would be more dangerous to them than we are now for the reason that we would not have to pay this transportation on logs that we do now. A lot has been said in this hearing about competition. The only competition from the Florida mills, or the Georgia mills, to speak of, is the competition we have largely within our own State, and is from mills that are located in the timber and don't have to pay these charges to tidewater.

"Q. Yes, sir. In that statement you are dealing with the type of material which you ship to the eastern markets?"

"A. That is a product by itself."

"Q. Yes, sir?"

"A. It is what is commonly known as merchantable timber and it is only produced from large timber and largely of the heart variety; and it is true that we have an advantage in the matter of freights on the present rate, on the lumber that we ship to what is known as the coastwise trade, which means the seaports along the Atlantic Coast."

[fol. 943] That advantage is by water transportation exclusively. That is, in substance, the only thing today which offsets our payment in to the mill of a freight rate on logs on the Cummer scale. And we would not do that if we had not the investment in our plant and equipment (Tes. p. 827-828). If this case should be decided adversely to me it is my position that the consequence would be to cause me a severe loss running into millions of dollars without the least particle of benefit to anybody in Georgia or anybody in Florida. In the event we were to be compelled to take such a loss and charge it off as it were, figuratively, and to go back into the timber, and there were the remotest competition between us and the Georgia mills, if they forced us to do that, we would be in a better position to compete with them than we are now. Once having absorbed our loss through the destruction of this property situated at Eastport, Florida, we are infinitely better off and we are far more dangerous as a competitor than we would be in this trade position.

Now, in regard to this question of freight rates; I don't regard this rate as particularly low, and I never have The fact of the matter is, one of my associated companies, the Ray Arnold Lumber Company, sold the standing timber on 107,000 acres of land down here in Boca County that was already tributary to our lands in east Florida. Nevertheless, we sold that timber, instead of attempting to haul the [fol. 944] logs to the Eastport mill and manufacturing them, rather than to pay the freight that it was necessary to pay to bring it to our mill. Where we had the opportunity to make disposition of that particular tract and to keep the remainder within the capacity of our present mills, we preferred to sell it rather than to ship it to our mill under the Cummer scale. And I would say that the man that bought it built a mill in the woods and was manufacturing it down

there although he could have shipped it to Tampa, although it was costing him more than it would have cost us to manufacture it. It was on the Atlantic Coast Line Railroad and subject to this rate on the Cummer scale.

Cross-examination.

(By Mr. Perry:)

Once I am there in the woods and once having absorbed the loss, I am infinitely better off. I hate to face that loss, though; that is going to give me a good many heart aches. There is invested in our plant here at Eastport rather more than two and a half million dollars—the things that go with it. Now, our loss is not going to be confined to what our investment at Eastport, Florida, is; we have property in New York, we have a transportation company that pulls that lumber to destination, and those facilities will also be a part of the wreck and the ruin. We might use that to some extent if we were in the interior cutting our lumber. We could not use it then just as well as now, because we have not got the facilities for doing business, we are out [fol. 945] here seventy or eighty miles in the interior manufacturing eight or nine million feet of lumber monthly; we don't know that we will get an adequate car supply to bring that to our plant facility at Eastport for loading on barges (Tes. p. 830). Mr. Foley stated that that loss would be over three million dollars. I am sure that estimate is conservative. Now, when I speak of a three million dollar loss, the loss that we suffer by our plant and the facilities out there is not all the loss we will suffer by any means, we must go on paying taxes on properties—still we are moving, yes, sir, and the loss of trade connections; it is impossible to put a price on a thing of that kind.

I first started in the lumber business in 1885 at Omaha, Nebraska. I was engaged at that time in the wholesale and retail lumber business. As a manufacturer I began in Minneapolis, Minnesota, in '89. I have been continuously manufacturing since that day down to the present time (Tes. p. 831). We had a number of plants. We had a plant at Minneapolis, Minnesota. We had a plant at Nickerson, Minnesota; a plant at Scanlon, Minnesota; a plant at Cass Lake, Minnesota; a plant at Duluth, Minnesota;

and we were producing three hundred million feet annually and buying there on the open market. We bought those plants right along one after the other. The maximum capacity of the plants was the plant at Scanlon, Minnesota, that held the world production of lumber record up to that time. That was one. We were producing at that time [fol. 946] 115,000,000 feet of lumber annually and we could have produced in excess of that amount. So far as these ground rattlers are concerned, in my forty odd years' Experience I have never bought one of them that was successful, Mr. Perry. When you think you have got a monopoly of saw mills in Florida that are out of timber, I am going to say to you that we have them in every State in the Union. They are quite necessary, yes, sir (Tes. p. 832).

As to what is timbered in north Florida and south Georgia, I must necessarily make a personal inspection of it. I put my money into it. I have made a trip over it. I visited that Perry operation on November 8th, 9th, and 10th, last; and a later visit was made on November 17th, 18th, and 19th. I visit that plant a number of times a year. I have made a personal inspection of the northern Florida, the Georgia-Florida territory, so to speak, along the border, on the Florida side (Tes. p. 833). I don't think there is any available timber up there for merchantable purposes that is not already owned by the mills in Florida. I have been watching these proceedings with considerable interest.

I made some reference to a tract of land in Polk or Lake Counties. I don't know how far that is from Jacksonville or Eastport by rail, but I think it is approximately 150 miles by motor, and I should think the railroad distance would not be any greater. I am not certain about it, and I never had occasion to look that up (Tes. p. 834). I am quite positive it is less than 170 miles.

I have received a letter from Mr. Walters dated January 7. I have the original letter with me. I will read the fifth paragraps (reading):

[fol. 947] "As stated at all times and in our testimony we desire to *we desire to* carry out the terms of our agreement of 1914 with Carpenter & O'Brien until the billion feet have been transported, but we cannot give testimony which would apply this 1914 rate to all logs moved by Atlantic Coast

Line Railroad intrastate and interstate over its whole system" (Tes. p. 835-836).

That is dated New York, January 7, 1927.

Redirect examination.

(By Mr. Cotterill:)

About all I have got to say, as I have already stated, I cannot imagine what this is all about. It is true that they have some mill men up there in Georgia that are out of timber who would like to locate somewhere else. Three of those gentlemen come down here and they make the statement or go on the stand and give testimony that they think there is some timber in north Florida. They don't have any idea as to the price they would have to pay, or what it would cost them to bring these logs to market.

Now, as I said before, Florida has no monopoly on the small mill man; he is all over the country; his domain is bounded by the Hudson Bay on the north, the Atlantic Ocean on the east, the Gulf of Mexico on the south, and the day of judgment on the west. They haven't even stated in this meeting that they would do anything if they were granted the rate.

[fol. 948] Now, why destroy industries on the Atlantic Coast Line Railroad that have spent millions of dollars in developing it—to give an opportunity to someone to try and do something? He has not even said yet he will do anything; he thinks he can do something. But surely—Now, in that connection, Mr. Fleishel made the statement yesterday that he has no objection whatever to the Atlantic Coast Line Railroad extending this intrastate rate into Georgia, and even went so far as to say that he would be perfectly willing that the Coast Line Railroad should deliver those logs at destination, regardless of distance, for a dollar a car. I will go him one better and say they can make free delivery if they want to, and Brooks Scanlon will never offer one single objection to them doing so!

We have down here at Eastport employees in that mill alone, some seven hundred and fifty people; and based on the usual calculation of four and one-half to five persons dependent on every man in the employ of an industrial

company, we have some thirty-five hundred people in Eastport. They are a happy lot. They are prosperous. They have work every working day in the year that they want to work, and they can't stay on our payrolls unless they do work. We have built homes for them—houses, churches, schools, community halls. And I am proud of that town down there! I think it is one of the best manufacturing small towns in the Southern States, or the Northern States. I don't want to see that destroyed. I don't want to see that [fol. 949] destroyed when there is nothing offered in exchange and somebody who is going to be benefited by changing these rates.

I can't imagine what it is all about!

Recross-examination.

(By Mr. Perry:)

I heard these Georgia manufacturers testify. They testified positively that there was lumber in Florida and they did desire to manufacture it in Florida and withdraw from Georgia if they had this rate. They knew nothing whatever about the quantity of it, or the quality of it, or the cost of it, or the location—or if they did know, they refused to divulge it (Tes. p. 839).

E. C. Green was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

(By Mr. Cassidy:)

E. C. Green; Jacksonville, Florida; manager of the Jacksonville Traffic Bureau, a branch of the Jacksonville Chamber of Commerce, and also of the city of Jacksonville. All [fol. 950] of the intervenors in this case are members of our organization. I have prepared a short statement showing the outbound lumber rates from Jacksonville and from Groups One and Two in the State of Florida, and the rates from certain points in Georgia.

(Thereupon the exhibit was marked for identification as "Intervenors' Exhibit No. 45, witness Green.)

The exhibit shows the rates to the eastern markets, and the bulk of the shipments as shown move to those markets, as I understand it, and the purpose of this exhibit is simply to show *simply* that the rates from the Florida zones are slightly higher than those in effect from south Georgia territory.

(Thereupon exhibit No. 45 was received in evidence. Tes. pp. 840-841.)

Cross-examination.

(By Mr. Gwathmey:)

These are the rates prescribed by the Interstate Commerce Commission in what is known as the Augusta Pine Association case, in Docket 13449. The rates from Jacksonville are the same as those in effect from the south Georgia points shown to the same destinations, taking New York City for illustration (Tes. p. 841).

(Witness excused.)

"Mr. Cotterill: In so far as our presentation in chief in behalf of the Intervenors is concerned, that is our evidence; I do not apprehend any further evidence to be submitted."

[fol. 951] E. M. Price was thereupon called as a witness, and, having been duly sworn at the previous hearing, testified as follows:

Direct examination.

(By Mr. Perry:)

Mr. Examiner, at the Valdosta hearing I submitted several exhibits comparing the results of the intrastate and interstate rates at Valdosta, Bainbridge, Waycross, and other places; and I would like now to submit my Exhibit No. 46, which gives the same information as to Climax, Georgia.

(Complainant's Exhibit No. 46, witness Price, was marked for identification.)

My exhibit No. 47, which I now submit, compares the rates on logs intrastate in North Carolina operated by the Atlantic Coast Line Railroad and the proposed rate of witness Perrin in this proceeding.

(Complainant's Exhibit No. 47, witness Price, was marked for identification.)

Exhibit No. 48, which I now submit, shows intrastate rates on logs in North Carolina operated by the Atlantic Coast Line from point to point, as compared with the rates submitted or proposed by the witness Perrin in this proceeding.

(Exhibit No. 48, witness Price, was marked for identification.)

It will be noted on this exhibit that the rates now published between the North Carolina points are on a per-foot [fol. 952] basis, and this has been converted to a cents-per-hundred-pounds based upon an estimated weight of twelve thousand pounds per thousand feet (Tes. p. 843).

Exhibit No. 49, which I now submit, is a comparison of the intrastate rates in South Carolina with the proposed rates of witness Perrin.

(Complainant's Exhibit No. 49, witness Price, was marked for identification.)

The Witness: Exhibit No. 50, which I now submit, is a comparison of the rates being applied jointly on intrastate traffic in South Carolina between points on the Atlantic Coast Line Railroad and points on the Charleston & Western Carolina Railroad.

(Complainant's Exhibit No. 50, witness Price, was marked for identification.)

These rates it will also be noted are subject to a twenty per cent reduction when they are used in combination with other lines.

Exhibit No. 51, which I now submit, compares the rates intrastate in Georgia with the proposed rates of witness Perrin.

(Complainant's Exhibit No. 51, witness Price, was marked for identification.)

In connection with this exhibit I want to call your attention to witness Perrin's Exhibit No. 24 where he submitted the *sup*posed Georgia intrastate scale. It was predicated [fol. 953] upon a minimum of twenty-four thousand pounds, which is the scale applying in Georgia on logs, n. o. s. The scale which I am submitting in this exhibit is the scale which is universally used in hauling logs predicated upon a minimum of forty thousand pounds and is known as the Georgia intrastate scale.

Exhibit No. 52, which I now submit, is really a summary of the preceding exhibits, and shows under column "H" the average of the inter- and intra-state rates; under "I" the average intrastate rates, compared in "J" with the proposed rates of Mr. Perrin.

(Complainant's Exhibit 52, witness Price, was marked for identification.)

In connection with this exhibit and with column "I" and columns "G" and "H," I would like to call attention to the testimony of Mr. Perrin, to the effect that the preponderance of the log movement on his line was intrastate.

Exhibit No. 53, which I now submit, merely shows the financial operating results of the Atlantic Coast Line for the year 1914, and then for the years 1921 to 1925, inclusive, indicating, as shown on the exhibit, that the gross operating, that is per mile, of Atlantic Coast Line has increased during that period, or rather, 1925 over 1914, gross earnings 155.2 per cent, and the net earnings per mile have increased 159.8 per cent.

(Complainant's Exhibit No. 53, witness Price, was marked for identification.)

[fol. 954] The purpose of that exhibit, of course, is to show that there is no real financial necessity for increased rates. The purpose of all these exhibits, Mr. Examiner, is that you might have a complete picture of the log rate situation as to the Atlantic Coast Line Railroad, in view of the fact that at the Valdosta hearing the interstate rates were submitted but the intrastate rates were not.

The rates shown on Exhibit No. 51 are the rates proposed and as shown on witness Perrin's Exhibit No. 24. The rates in Georgia are the rates authorized by the Georgia Public Service Commission. A. C. L. Railway, I. C. C. B-2092. That is the Georgia intrastate tariff. Our authority for Exhibit No. 53 is "The Annual Report Filed with Georgia Public Service Commission." I did not compare the results shown by these annual reports with the results shown by the annual report filed with the Interstate Commerce Commission. The Atlantic Coast Line Railroad files with the Georgia Commission an annual statement showing the results of their system operations as well as their intrastate Georgia operations. I presume it is the same information as given to the I. C. C. It is so stated in the report and sworn to. In the last column of the exhibit, headed, "Net Operating Earnings," I mean the net operating revenue. It is shown in operating earnings per mile of road. It should be net operating revenue.

[fol. 955] Thereupon Complainant's Exhibits 46 to 53, inclusive, were received in evidence.)

Cross-examination.

(By Mr. Gwathmey:)

AII of the rates shown in this series of exhibits are the rates applicable via the Atlantic Coast Line Railroad. I have not undertaken in these exhibits to show rates that may be applicable over various lines of railroad, interstate or intrastate, because these lines are not involved in this proceeding (Tes. p. 847). No, sir, I am not familiar with the circumstances and conditions of a transportation character under which logs move in connection with the other rates of the Atlantic Coast Line Railroad than those shown except in a general way. I have no knowledge of any of the movements. I have exhibited the average intrastate and the average interstate log scales of the Atlantic Coast Line Railroad and the individual scales from which I draw my average.

"Q. The final conclusion of the Georgia Public Service Commission respecting the proper rate level on rates with-

in the State of Georgia has been suspended for the time being?

"A. If you have in mind the order that the Georgia Commission issued some months ago, that has been cancelled, there was no suspension to it; it was cancelled on September 28th, I think it was. It was rescinded (Tes. pp. 848-849). Our own conclusion has been suspended as the eventual rate on logs within Georgia."

[fol. 956] As to whether there is any circumstance or condition suggesting to my mind the propriety or reasonableness of establishing within the State of Georgia lower rates on logs than the averages of the Atlantic Coast Line scale shown in my exhibits, I couldn't answer that question without a thorough analysis. Now, you are speaking of establishing rates in Georgia for state-wide application over all lines. That question could not be answered yes or no on basis of this exhibit, because this only applies with Atlantic Coast Line Railroad, which is only one of fifty-eight railroads in Georgia. This Georgia scale applies all over—what we call Class A railroads in Georgia. I have not familiarized myself with the general rate level on logs charged by the Southern Railway that operates in Georgia at the present time, because I haven't made any minute investigation of all the other log rates in Georgia for two years. The Commission from time to time authorizes the cancellation of what is known as "paper rates," obsolete rates. It is possible that there may have been some cancellation along that line that has changed the conditions that existed two years ago; and I am frankly not in position to answer that question. I don't recall the facts as they existed two years ago (Tes. p. 850). I can't say whether the Cummer scale in Florida, in its amount and for the range of hauls involved, is lower, on the whole, than log rates prevailing in the Southeastern States. If [fol. 957] you want me to answer the question with qualifications I can answer it. The Cummer scale is the lowest scale that I have been able to locate. As to whether or not it is our petition to make the rates from Florida to Georgia the same as between points in Florida under the Cummer scale, our complaint, as far as the Interstate Commerce Commission is concerned, of course speaks for itself, and doesn't mention in its prayers the Cummer scale. As to

my testimony at Valdosta, it is that if the Cummer scale is a reasonable scale for application intrastate in Florida, then we insist that it is a reasonable scale for application interstate for Florida to Georgia. I am not independently advancing the contention that a rate level represented by the Cummer scale would be just and reasonable. I had no expectations about it, as to whether the Interstate Commerce Commission would uphold any contention that the Cummer scale would be a just and reasonable scale to apply Florida to Georgia. I had filed the complaint and had attempted to give the Interstate Commerce Commission the truth of the situation as it then stood, and naturally have to leave it with the Interstate Commerce Commission as to just how the complaint should be satisfied. I did not say that I did not anticipate that such a rate level would be just and reasonable. We will presume that the scale in Florida was four times as high as the interstate scale from Florida to Georgia. You are asking me if in my opinion the Cummer scale would be a reasonable scale. I can't answer that. There would have been no complaint, [fol. 958] of course. The Georgia Commission is not advocating, in its true sense, any particular scale to be used in satisfying or in removing this alleged discrimination. We do say, and insist, that if the present intrastate rates in Florida are found by the Interstate Commerce Commission to be reasonable rates for intrastate application in Florida, that that scale be used interstate from Florida to Georgia. As to whether, if it were found by the Interstate Commerce Commission that there is unjust discrimination of a hurtful practical character which ought to be removed regardless of consequences, our complant would be satisfied by an increase in the rates between points in Florida, at least up to the approximate level of the so-called Alabama scale, I am not prepared to say just what is going to satisfy the complaint of the Georgia Commission. We would have to abide by the final decision of the Interstate Commerce Commission. Just what the measure of that rate should be the Georgia Commission is not saying, or attempting to say, to the Interstate Commerce Commission. I am in the attitude of not making any contention at all as to what should be a proper, just and reasonable rate level on logs from Florida to Georgia, but am simply leaving that ques-

tion to the Interstate Commerce Commission in the light of all the evidence, except to the extent that we still contend that if the Florida scale is found a just and reasonable scale, it should be used between Florida and Georgia. Whether it is a just and reasonable scale I am not prepared to say. I haven't investigated the reasonableness of the Florida scale. I would not attempt to answer the question without a thorough investigation. Our Commis- [fol. 959] sion has filed this complaint of alleged discrimination; and the point involved is the rates interstate from Florida to Georgia, as compared with the intrastate rates. In my testimony at Valdosta, I stated that if the Commission found the Florida intrastate rates just and reasonable, then we insist that those rates should be used to remove this alleged discrimination from Florida to Georgia. We are advocating the application of no particular scale beyond that point, that if this Florida scale is reasonable—and that is explained in my direct testimony at Valdosta—that has been in effect for a number of years in Florida—now if, in the opinion of the Interstate Commerce Commission that scale is just and reasonable, and it is justified for intrastate application in Florida, then we insist that that same scale be extended into Georgia. We are not advocating any particular scale of rates; we are leaving that to the Interstate Commerce Commission. Now, what would be the action of the Georgia Public Service Commission as an outgrowth of the final decision of the Interstate Commerce Commission in this case, I can't say.

"Q. Now, I am not speaking as to its attitude after the decision; but I am trying to interpret what it is you are here contending for with respect to the measure of that interstate rate, assuming the Interstate Commerce Commission were to find that you had not made a Section 3 or 13 case; are you advocating any reduction in the interstate rate from Florida to Georgia, even if the Interstate Commerce Commission should not find circumstances justifying it changing the Florida rate?"

"A. Well, we are advocating this course; that the interstate rate from Florida to Georgia should be no higher than the intrastate rate in Florida."

[fol. 960] "Q. Granting that, ans assume that you have lost on that point, or that you may—I am only asking for

that assumption, trying to exclude that element in your case—assuming that the Commission should find that there is no hurtful discrimination under Sections 3 and 13 of the complaint, and that on that account it may not disturb the rate in Florida, do you independently ask for a reduction of the interstate rate?"

"A. I haven't given that any consideration. I am not prepared to answer that. That, frankly, is a matter that would have to be determined by our Commission. I would have to be governed by their instructions."

"Q. And that, so far as you know, has never yet been determined?"

"A. As to the effect of what the Commission would do, the Georgia Commission would do——"

"Q. Or what it does now?"

"A. Or what it does now?"

"Q. What is its position now?"

"A. Anticipating that our complaint would be dismissed?"

"Q. In that contingency, yes, sir, as to the discrimination feature?"

"A. We are not giving that any thought in this case."

[fol. 961] Jacksonville, Florida, January 21, 1927—
9:30 A. M.

Met pursuant to adjournment.

J. L. WHITE was thereupon recalled as a witness and, having been previously sworn, testified as follows:

Direct examination.

(By Mr. Davis:)

I have examined the exhibits filed a few days ago in this hearing by Mr. Pettijohn, dealing with the cost figures that I have introduced in my exhibit at Valdosta. On the second page of Exhibit 39 filed by Mr. Pettijohn there are certain decreases in the amounts which I used, and he deducts $111.37 from that figure of $7196.42. Mr. Pettijohn bases

his deduction on two grounds. One of them is that some of this delay is due to the fact that these logs trains per- [fol. 962] form switching service at certain stations for other traffic. The other is that only fifty per cent of the overtime paid for on account of meeting of other trains could be properly assigned to log trains, the other fifty per cent being properly chargeable to the train for which it was delayed. Mr. Pettijohn states that his assignment is arbitrarily made.

As to the first of his reasons, my Exhibit 25, revised, first referred to, takes this into account by deducting 3.8 per cent from the entire expenses on account of other traffic hauled. This is carefully based upon the actual relation of the other traffic car-miles to the total log car-miles. I am quite sure that this is very fair. Further, an investigation of the performance of these trains for September, 1926, the month under discussion, shows that there were only four crews to which local freight wages were paid, and that such wages were paid because of switching for more than one hour in the handling of these log cars at Carbur. This charge could not possibly be assigned to any other service except that incident to the transportation of the logs, and is, therefore, properly shown in my statement. My statement, Exhibit 25, Revised, as to this, is thus fairer to the shipper than the facts justify, because I have made a deduction of 3.8 per cent on account of other traffic, whereas the facts show that these local freight basis payments were made solely on account of transportation of logs.

As to his second deduction, it is quite manifest that if [fol. 963] any deduction is to be made because of the delays brought about by other trains, we would be under the necessity of taking into account the penalty wages accruing to the crews of those trains. That has not been done by Mr. Pettijohn, and, therefore, my method is correct, and is certainly not based upon any arbitrary assumption.

Furthermore, penalty wages accrue from delays which are not caused by other trains, such as a broken rail or any obstruction to the track. Then, of course, there could be no apportionment of these penalty claims. My computations are based upon actual performance, while Mr. Pettijohn's are necessarily based upon theoretical conceptions, in which

he states that he has arbitrarily assumed that fifty per cent of the penalty wages was fair.

Mr. Pettijohn, in dealing with Item "B" of Exhibit 25, Revised, which is "Cost of yard hauling, $1,429," has deducted $594.70 from my figures. Of this amount $476.41 has been made by him by reducing the time of the switch crew in handling loads from Milldale to Eastport, and empties from Eastport to Kings Crossing, from six to four hours per day. Mr. Pettijohn's assumption is based on a partial observation of one day's operation; my estimade is based on the statement of our superintendent of terminals, Mr. T. W. Hansell, which was further supported by the testimony of yard conductor Keene. I do not think that this needs any further comment.

He then strikes out of my account $12.06, the item of interest, on the theory that this does not belong to any cost [fol. 964] accounting analysis, but that it should be provided for through profit. I did not, in my statement of cost, attempt to deal with interest charges from a theoretical cost accounting standpoint. Interest is a charge against the treasury of the company and must be paid in some way, whether through profit-and-loss or through some other account. If Mr. Pettijohn wishes to eliminate interest from the operating cost, he should then deduct it from the profit, thereby making it as long as it is broad. This also applies to the elimination of interest under Items "C" and "G."

Mr. Pettijohn deducts from my statement under this item $106.23, reducing by that amount my allowance for cost of locomotive repairs. My figures are based upon the cost of locomotive repairs on the Third Division, which includes this line and all of which is located in the State of Florida, for the most recent month available at the time of making the calculation. Those figures are, in my opinion, much more nearly accurate than are the figures taken for the entire system. The experience of the Atlantic Coast Line is that engine costs on its third division are about thirty per cent higher than similar costs on the other divisions. As to Items "A" and "B" of my original statement, which we have now gone over, I am of the opinion that my original statement as shown in my Exhibit 25, Revised, as to these items is correct. Mr. Pettijohn, in dealing with Item "G" which is "Cost of interest and depreciation; locomotives

$572," of my Exhibit No. 25, Revised, has deducted $387.46. [fol. 965] He has divided this deduction into three items; one of them is the elimination of interest, $381.35; the second is the adjustment of depreciation to thirty days instead of one-twelfth of a year, $2.61; and the third is applying train-mile percentage instead of car-mile percentages, $3.50. What I have heretofore said under Item "B" as to interest, applies to this $381.35. The interest accrues and must be paid. As to the item of $2.61 for depreciation, that is very small and it is based upon calculating depreciation on thirty days instead of one-twelfth of a year. Over the year there can be no wrong to the shipper in calculating depreciation upon a monthly basis. Furthermore, if there were any theoretical wrong in the month of September, 1926, it is overbalanced by the fact that there was an extra trip of this train in that month.

I think Mr. Pettijohn, in undertaking to apply train mileage rather than car mileage as the basis for assigning locomotive repairs to this service, overlooks the fact that this is a special service to which certain engines are segregated or allocated. As a matter of fact, five engines are assigned to this service and are constantly used in it. The wear and tear on an engine is necessarily proportionate to the strain to which it is subjected. In dealing with an average engine or with the average of engines in miscellaneous service over the entire system, train mileage may be as accurate as car mileage, but when a locomotive or a number of locomotives are assigned to a particular service, which confessedly puts [fol. 966] each of them to a constant strain, approaching its maximum capacity, it is very much fairer to attribute the repairs on those engines to the assigned service, and that service is measured by the car mileage made by those engines; and the method used by me, to-wit, car mileage method, is as to this particular service more nearly accurate than is the method suggested by Mr. Pettijohn. This service and the Putnam log service, which runs on the same route, have five locomotives assigned to it.

Mr. Pettijohn in dealing with Item "E" of Exhibit No. 25, Revised, which is "Cost of Maintenance, Locomotives, $3,423," made a deduction of $801.10. And this is made up of two items, decrease in repair cost per mile $751.30, and applying train instead of car mileage percentage,

$49.80. The first of these items, to-wit, $751.30, is disposed of by my discussion under Item "B" in reference to the deduction which Mr. Pettijohn there undertakes to make of $106.23. The next item as to applying train instead of car mileage percentages is disposed of in the discussion of the third item of $3.50 under "C".

Mr. Pettijohn, in referring to the second Item "C" of Exhibit No. 25, Revised, which is "Cost of interest and depreciation of cars, $624," deducted $419.28. This is made up of two items, elimination of interest $416.50, and of adjusting depreciation to thirty days instead of one-twelfth of a year, $2.78. In my discussion of the $12.06 amount un- [fol. 967] der Item "B", and of the $381.35 amount under Item "G", I have discussed the principles applicable to this matter, and for the reason there stated I feel quite sure that the deduction undertaken to be made by Mr. Pettijohn should not be allowed.

Mr. Pettijohn aggregates his decreases in the sum of $2,242.18. I have dealt with each item composing this aggregate and I am very sure that none of it should be allowed.

Cross-examination.

(By Mr. Pettijohn:)

As to whether interest on investment is paid for by the treasurer as interest, I don't know whether the treasurer, Mr. John T. Reid, had to pay it or not, but somebody had to pay it. I can't tell you whether interest on investment is paid for by the Atlantic Coast Line as interest by any one connected with the Atlantic Coast Line. I don't assume to understand the word "accrues" from an accounting standpoint, Mr. Pettijohn. I know that certain equipment is covered by equipment trusts, and those trust certificates bear interest and that interest has to be paid. That is a part of the interest that I was computing on here. I can't tell you whether there is any locomotive on the third division covered by equipment trust obligations. I have included interest on locomotives and cars but not necessarily interest on equipment obligations. I simply mentioned that as an example of one way that interest accrued.

"Q. Does the Atlantic Coast Line any place in its operating expenses, its income accounts, or its profit-and-loss accounts, or in its general balance sheet, reflect any item of interest on investment?"

"A. You will have to ask some of our accounting people that question, Mr. Pettijohn."

"Q. Then, as far as you know, the item which you have [fol. 968] included here as interest on investment does not appear on any of the accounts recorded by the Atlantic Coast Line or exhibited in their annual reports."

"A. I can't tell you that of my own knowledge."

The locomotive repairs on the third division for September were 30 per cent higher per locomotive mile, than the balance of the system measured by the cost per locomotive mile. I can't tell you offhand whether the average locomotive miles made by our locomotives on the third division average as high as our locomotive mile performance on other divisions. The mileage runs in the State of Florida are less than they are for the system. In some cases the individual engine mile performance would be considerably less. I judge that the locomotive miles made in the log service are greater than the mileages made for the system per locomotive day (Tes. p. 872). I don't know it; I haven't checked it up. The class of locomotives operating in the State of Florida are generally rather smaller than the type of locomotives generally operated on the system. I don't think that the locomotives of the Atlantic Coast Line wind up their life practically in service in the State of Florida. I don't know as any have lived out their usefulness yet. As to whether our oldest equipment, in so far as locomotives are concerned, is in Florida, assigned to Florida operations, I would not like to put it that way. I would rather put it our smaller power, because we handle a great many local freights and pick-up service in Florida, which requires a [fol. 969] smaller character than we use on the first and second divisions. At the same time we have some of our older cars used on a branch line and first and second division, in fact I expect the oldest we have are in that service. Our engines of smaller capacity in power are our older class of engines. The engines that are used in this log train service are a little larger than the average engines that are used on

the Third Division, as far as power is concerned. I would not say they are higher powered and better engines than are used in the freight service in Florida generally; no, I claim that the 800 class engine which is used in this service is loaded to its capacity by handling forty-four cars of logs. I forget offhand the capacity of that engine in tractive power. I would have to get my tonnage statement to tell you that. The capacity of the engine used is because of the grades and the tonnage of the train combined. In my duties I do not in the slightest degree deal with locomotive repairs. They do not come under my supervision in any way. I would know what the effect of any one month's repairs may add, as compared to the average for the year only by studying the various reports of the mechanical department. I don't know as I can answer what increases or decreases the average monthly repairs to locomotives on a railroad system. I don't know during what period of the year the repairs are highest. It might be so, that during the period of heavy locomotive miles, when locomotives cannot be spared in the shop and the repairs are not made that [fol. 970] the heavy cast per mile naturally increases. I couldn't tell you I don't know. I shop some of the heavy locomotives during the heavy period of transportation. I try to keep our shop going at all times. In fact, I know we do. We do the shopping during both periods of heavy movement and the light movement. We do most of it during the light period of movement, of course (Tes. p. 876).

J. W. PERRIN was thereupon recalled as a witness and, having been previously sworn, testified as follows:

Direct examination.

(By Mr. Carl Davis:)

I was present at the conference held on Mr. Delano's business car in Jacksonville on July 24, 1926. There were also present Mr. Lyman Delano, Executive Vice-President, Mr. C. McD. Davis, Freight Traffic Manager—the latter being present in the hearing room today, as he has been throughout the hearing, and was also present throughout

the Valdosta hearing for the Atlantic Coast Line Railroad Company; Mr. W. E. Cummer and Mr. D. G. Coit for Cummer Lumber Company, Milldale and Lacoochee; Mr. J. Wade Tucker for the Everglades Cypress Company, Loughman; Mr. M. L. Fleishel, Mr. A. J. Marsh and Mr. W. J. O'Brien for Putnam Lumber Company, Eastport; Mr. J. S. Foley for Brooks Scanlon Corporation, Milldale; Mr. Herbert Wilson for Wilson Cypress Company, Palatka; Mr. Fred Rheimers for Deckman Lumber Company and Natalbany Lumber Company, which operate in Mississippi Valley [fol. 971] territory. I have prepared a memorandum for my files of what happened at that conference. Mr. Delano also prepared one on the train leaving Jacksonville southbound the morning of the conference; Mr. C. McD. Davis was on the train with him and assisted in its preparation; Mr. Davis having also participated in the discussion at Jacksonville. My memorandum was prepared immediately upon my getting back to Wilmington on the 25th of July, 1926. I have a clear recollection, even independent of that memorandum, of what happened at that meeting. In fact, in answer to your last question I begin this way: I remember the conference very distinctly. Mr. Fleishel acted as spokesman for the Florida saw mill men. He stated that the saw mill men realized that by usual rate comparisons the intrastate log rates of the Atlantic Coast Line Railroad are extremely low, and that the Atlantic Coast [fol. 972] Line, as the result of criticism from the Florida Railroad Commission, had had a possible opportunity to advance those rates, and not done so, and that the saw mill men were fearful that as a result of the pending complaint the Interstate Commerce Commission might render a decision ordering an advance in the Florida intrastate log rates. Mr. Fleishel further stated that, based in a measure upon the expectation of a continuation of these rates, large investments had been made in saw mills in Florida, and that any substantial increase in the Florida intrastate log rates would be disastrous to the industry. He stated that there had been a large amount invested in saw mills in Florida which now obtained the benefit of those rates, stating the amount of that investment at approximately ten million dollars.

Mr. Fleishel asked Mr. Delano his opinion as to whether the complaint could be withdrawn and what would be the A. C. L.'s attitude towards an effort in this direction on the part of the Florida saw mill interests, and in the event it should not be withdrawn what would be the A. C. L.'s attitude when the complaint was heard. Mr. Delano and Mr. Davis both stated that the Atlantic Coast Line had had nothing to do with the bringing of the pending complaint by the Georgia Public Service Commission, and for that reason could not object to its withdrawal should the saw mill interests succeed in having the Georgia Commission take such action.

Mr. Delano then went into some detail as to the history of [fol 973] these rates, his statement, participated in part by Mr. Davis, in substance being as follows:

The Atlantic Coast Line, in the purchase of the Jacksonville & Southwestern Railroad, found in effect a contract which had been entered into between that railroad and the Cummer Lumber Company, the builders and former owners of that road. Under this agreement, very low rates were being applied on logs to Milldale from points east of the Suwanee River, when the logs moved in train load lots, thirty cars minimum, the rate for the maximum distance having been in 1903 ten dollars per car of fifty thousand pounds. Mr. Delano emphasized the fact that under this Cummer contract logs were to move in train load lots. Under the terms of the purchase of the Jacksonville & Southwestern Railroad, the Atlantic Coast Line assumed that railroad's obligation under that contract. That contract expired by its own terms in 1918.

I desire to digress here to say that the contract with Cummer Lumber Company was lived up to to the time of its expiration and that I do not understand that Mr. A. G. Cummer's purpose in filing the contract, his Exhibit 27, was to indicate that he considers that the contract is in any way binding since its expiration in 1918 (Tes. p. 881).

Mr. Delano further stated that in 1914 the Carpenter-O'Brien Company entered into negotiations with the A. C. L. for movement of logs from Lafayette and Taylor Counties to the vicinity of Jacksonville, and as a result of these negotiations a rate and service contract between the Car-
[fol. 974] penter-O'Brien Company and the A. C. L. Rail-

road was made for train load movements at the rate of twelve dollars per car of fifty thousand pounds from points between Clara and Perry. Mr. Delano stated that the Coast Line recognized the Brooks Scanlon Corporation as the successor to the Carpenter-O'Brien Company in this contract. It was explained that the Atlantic Coast Line issued a tariff carrying rates in accordance with the contract, these rates having been published as applicable only on train load lots, and that this tariff was filed with the Florida Commission. The Florida Commission refused to accept into its files this tariff as applicable only on train load lots and insisted upon the cancellation of the rates, or else the application of the rates without reference to the number of cars, application to also be made uniformly between all points on the A. C. L. Railroad in Florida and not merely on that part of the A. C. L. which was formerly the Jacksonville & Southwestern Railroad.

I digress from the recitation of Mr. Delano's statement to say that it is under this filing with the Florida Commission, and not under the terms of the contract, that the Wilson Cypress Company and the Cummer Cypress Company have obtained and are obtaining the benefit of those low rates to points like Palatka, and Lacoochee, which are both situated on lines of the Atlantic Coast Line but which lines were never owned by the Jacksonville & Southwestern Railroad Company. The Jacksonville & Southwestern Railroad Company was about ninety miles long and ran from [fol. 975] Jacksonville and environs to Newberry or a few miles west thereof. It is also under the filing of this tariff that the Putnam Lumber Company receives the benefit of these rates. There is no semblance of contract, except as I will hereafter discuss, between the Atlantic Coast Line Railroad Company and the Wilson Cypress Company or the Putnam Lumber Company or the Cummer Cypress Company.

Returning now to a recitation of Mr. Delano's statement: He stated that out of a desire to more than fully and more than fairly live up to the agreement with the Carpenter-O'Brien Company, the A. C. L. Railroad had made filings with the Florida Commission, and in keeping with the Florida Commission's ruling above mentioned had made these rates applicable in units of carload lots over all of its lines

in Florida for the distance mentioned without regard to whether the movement was over all or any part of the lines formerly owned by the J. & S. W. Railroad. It was explained that the contract with the Carpenter-O'Brien Company is limited to logs cut in Taylor and Lafayette Counties, and, by its terms, is to expire when one billion feet shall have been cut.

Attention was called to the fact that the maximum distance to which the Carpenter-O'Brien scale was applicable is 170 miles.

There was then a discussion of the Carpenter-O'Brien rate as compared with other rates in other Southeastern States. Mr. Delano stated that regardless of the measure [fol. 976] of the rate, the Atlantic Coast Line did not desire to attempt to break a contract which in 1914 it had entered into with the Carpenter-O'Brien Company, but he did clearly say that the Atlantic Coast Line could not agree to extend those rates from points in Florida to points in Georgia, or intrastate or interstate in the remainder of the Atlantic Coast Line's territory, because the Atlantic Coast Line has a number of important log movements elsewhere on its system, all of which move on rates materially higher than the Florida rates, and to do so would bring about a serious and unwarranted reduction in the Atlantic Coast Line's revenue. Mr. Delano stated that if the complaint of the Georgia Public Service Commission came to a hearing, the Atlantic Coast Line would defend the reasonableness of its existing interstate rates, and that while the Florida intrastate rates are very low, the Atlantic Coast Line would submit the entire history of those rates with an expression of its desire to live fully up to the terms of the Carpenter-O'Brien contract—now known as the Brooks Scanlon Corporation contract—as long as it is legal to do so without extending there low rates to interstate business or to other log hauls (Tes. p. 884).

I desire to add here that the summary of the assurances extended by Mr. Delano at the July 24, 1926, conference, as stated in the record here on the 20th by Mr. Foley, are correct and in accordance with the foregoing.

I am authorized to say that the statements of Mr. Delano [fol. 977] and Mr. Davis in that conference which you have summarized continues to be the position of the Atlantic

Coast Line Railroad Company. And I may say that the Atlantic Coast Line's position on this subject—because of what is considered the moral aspects—is now and has been in accordance with Mr. Delano's and Mr. Davis' statements as I have undertaken to summarize them. My testimony has already undertaken to show that these rates are, per se, and relatively, very low. I again call attention to the fact that the Atlantic Coast Line has outstanding but one document dealing with the rate on intrastate movements of logs in Florida, and that was made with the Carpenter-O'Brien Company, which has been succeeded by the Brooks Scanlon Corporation. The Atlantic Coast Line Railroad Company has no semblance of a document dealing with rates for any other Florida saw mill and is under no arrangement in reference to rates on logs with any person or corporation except as above stated. I referred to a document between the Atlantic Coast Line and the Wilson Cypress Company, dated March 22, 1926, and heretofore offered in evidence as Exhibit No. 31; and that between the Atlantic Coast Line Railroad Company and the Cummer Cypress Company, dated March 20, 1926, and heretofore introduced as Exhibit No. 28; and that between the Atlantic Coast Line Railroad Company and the Putnam Lumber Company, dated February 16, 1923, and heretofore offered in evidence as Exhibit No. 34. Those documents do not un- [fol. 978] dertake to fix rates, They are service contracts. The contracts to which I have reference in making that statement are as follows: Paragraph seven of each of these contracts contains the following: "The (blank) Company agrees to pay promptly to the Railroad at the rates provided for in current tariffs, all freight and demurrage charges due for the movement of said logs or for the detention of cars, for a period greater than that permitted in the proper and lawful tariff of the railroad governing same."

Paragraph twelve of each contract provides that it shall become effective upon a certain date and "shall thereafter continue in force and effect until terminated by either party hereto, by giving to the other party thirty (30) days' notice in writing of the intention to terminate this agreement." The Cummer Cypress Company's agreement became effective on the 19th day of June, 1926, the Wilson Cypress Com-

pany's agreement on the 13th day of July, 1926, and the Putnam Lumber Company's agreement on the 25th day of August, 1922. Now, in connection with the latter, the Putnam Lumber Company's contract was merely the substitution of the Atlantic Coast Line's contract for that of the Railroad Administration, and consequently, the date effective is somewhat retroactive to the date of the contract. In other words, the date effective is before the date of the contract. The date effective was put back to the assumption of the contract relation by the Atlantic Coast Line Railroad so as to make it a continuous contract.

I know what has been the attitude of the Florida Rail- [fol. 979] road Commission with reference to these railroad log rates. Yes. In my previous direct testimony I filed exhibits showing that those rates met with criticism from the Florida Commission, because they were thought by the Commission to be unreasonably low and a burden upon the Company's other traffic. These criticisms of the Florida Commission have been well known. The attitude of the Florida Commission on this subject has been no secret and has been one of the well known traffic facts. I heard Mr. Wells' statements, at this week's session, which I understood to be, in substance, that the written communications from the Florida Commission, copies of which I filed in this record, were written without specific investigation as to the remunerative character of the rates; that the Florida Commission now feels that as a result of its cost study, very recently made, the log rates in Florida are fairly remunerative, but that the Florida Commission does not take the position that this intrastate scale would be reasonable for interstate application because of the fact that if there should be a movement of logs from points in Florida to points in Georgia, they would in all probability be moved in single car units. Chairman Wells' statements do not take into account the fact that under the requirement of the Florida Commission this scale of rates is applied universally in Florida over the Atlantic Coast Line on any number of cars. His statement make no mention of the fact that Mr. Pettijohn's recent cost study was based entirely upon train load operations, and that even supposing that [fol. 980] there is some difference left between the total

per car charge collected and the expenses which his cost study allocates to that service, such result would not be representative of that situation in which logs are moved in single car units. The contention of the intervenors that the cost of transportation in train load lots is much less than the cost of transportation in single car units is correct. This is, of course, true both as to interstate movement and intrastate movement of logs. The Florida Commission, by its action heretofore taken, has required the Atlantic Coast Line to apply the rates intrastate to the unit of a single carload, and the pending complaint of the Georgia Public Service Commission seeks to have the Interstate Commerce Commission order into effect reduced rates to apply from points in Florida to points in Georgia in units of a single carload and not limited to train load lots, the unit upon which the cost study was prepared.

I have examined the exhibits on yesterday, I think it was, by the Georgia Commission. Exhibit 46 is merely a statement of the existing rates, from the indicated points in Florida to indicated points in Florida and in Georgia, tariff references being given, and, of course, the tariffs will speak for themselves as to the correctness of the figures. The other exhibits, except the last one, are log rate scale comparisons which deal only with one interstate scale, the comparison in all other respects being with intrastate scales. The fact that the exhibits compare—I am making a general [fol. 981] statement about the several exhibits—these exhibits compare our proposed scale, which is the Alabama scale, with several intrastate rates, and in no case is a voluntary rate shown in these exhibits with the exception of the interstate scale, which we propose to reduce (Tes. p. 890).

Now, discussing the individual exhibits, I will mention No. 47 first. This is a comparison between the scale as submitted by me in this case with the North Carolina intrastate rates applied uniformly in North Carolina on lines of seventy-five miles or more in length. These rates were made by the legislature of North Carolina, or at least through a commission appointed by the Governor of North Carolina as a result of the contentions by the legislature, at which time there was an effort to establish a general system of rates in North Carolina on the Minnesota basis.

That was in 1913. As a result of the agitation in the legislature, the Governor appointed the commission, who reviewed all the rates, took them out of the hands of the corporation commission, and finally made these log rates, among others. We were under the threats of penalties, and the record of that situation has been shown in several cases before the Interstate Commerce Commission. The managements of the railroads, through their presidents, finally accepted the rates as required by the legislative commission through the Governor of North Carolina, but filed with the Interstate Commerce Commission a formal protest calling attention to the fact that the rates so established were mani- [fol. 982] festly discriminatory and unfair to the North Carolina carriers; in other words, there was nothing of a voluntary character in the North Carolina log rates. And I might call attention to the fact that it is only by considering the fact that the rates shown in this exhibit include two 25 per cent increases that you can get a proper idea of how very low the North Carolina authorities made the rates in 1914.

Exhibit No. 48 compares the scale as proposed by the Atlantic Coast Line in this case with certain rates applicable per thousand feet between designated points in North Carolina. Incidentally, with the exception of the rates to Goldsboro, Wilson and New Bern, the rates are paper rates in the absence of any log movement at all, which is equivalent to saying that we are moving logs to only those three points. These rates were made by the Supreme Court of North Carolina on appeal in a case brought against the Atlantic Coast Line by a Wilmington party who demanded the application of our net rates on logs, the product of which were shipped from Wilmington by water. The Supreme Court of the State passed upon that situation, and, under the theory of discrimination, required the application of those net rates as the rates to Wilmington proper. Thereupon the North Carolina Commission established the rates to Wilmington on the same basis and have constantly required the extension of them to other points of destination ever since, wherever there is any demand for them. Fortunately, at this time, as I have said, we handle a very [fol. 983] limited amount of logs under this scale.

Exhibit No. 49 compares our proposed scale with the South Carolina intrastate rates. This comparison, by the way, indicates the changes that have been made or will be made in the next few days in the South Carolina intrastate scale. Generally speaking, the changes are reductions because the South Carolina scale is slightly higher throughout than the Alabama scale, which we now propose. I may say in this connection that only yesterday the Interstate Commerce Commission has handed down its decision in the Southern Cotton Oil Company's case, covering logs from South Carolina to Savannah, and have approved the Alabama scale, which is the scale that we are submitting in this case. That case was Southern Cotton Oil Company versus The Atlantic Coast Line, which covers rates from South Carolina stations to Savannah (Tes. p. 892).

Exhibit No. 50 is apparently submitted for the purpose of comparing joint line rates between stations in South Carolina to four single line rates. As a matter of fact, however, for the purpose of rate making, the South Carolina Commission considers the Coast Line and the Charleston & Western Carolina Railway as one railroad, under the theory that the railroads in that State under the same control or the same management are considered as one system. So that these rates merely reflect the single line scale in South Car- [fol. 984] olina applied jointly under that rule.

Now, I will pass over Exhibit No. 51 as to Georgia intrastate rates because it is probably not necessary for me to refer to them.

Exhibit No. 52 is a comparison between our proposed scale and the average of our interstate scale as now in effect and the several intrastate scales. Of course, the same general statement might be made with respect to this as was made in connection with the statements covering the several intrastate situations. In other words, if the State rates are low for individual considerations, why, the average must necessarily be low also for consideration as a proper measure for comparison.

Exhibit 53 is a financial statement showing increases over the years 1914, 1921 to 1925 inclusive. Manifestly, both operating revenues and operating expenses must have increased during the years 1914 to 1925 inclusive. First, the rates themselves have been subject to two general increases

of 25 per cent. each; and, second, the normal growth of traffic has increased the revenues. Now, there is a comparison of percentage increases in the gross earnings and the net earnings, which is equivalent to saying that the net earnings have increased a larger percentage than have the gross earnings. Now, I only want to say in connection with that that it would be most phenomenal if after the many millions of dollars that have been spent for providing increased efficiency and reducing operating costs there should not have [fol. 985] been reflected in some way a difference in the percentage changes between operating receipts and operating expenses. I might state that within the last few years the Atlantic Coast Line has spent a good many million dollars in increasing its facilities, and that, of course, has naturally had the result of not only more efficiency but increased economies.

"Q. What, as you understand it, is the average actual weight per foot of these Florida logs?

"A. Well, Mr. Foley's last year's movements average about ten and a half pounds to the foot, or ten thousand four hundred pounds to the one thousand feet."

Incidently, I meant to refer to the fact that in the North Carolina case, Mr. Price reduced the per thousand foot rates to twelve dollars per thousand feet. If he should adopt the same basis of rates—and of course it would vary, he goes upon the weight per thousand feet—but if he should adopt the same basis of weight per thousand feet as occurred in the case of the Brooks Scanlon logs during 1920, it would add one-half cent per hundred pounds approximately in that scale that he has shown in North Carolina.

"Mr. Price: Mr. Examiner, if I may, I would like to state that there right at this point the authority for the estimate of twelve thousand pounds, that was testified to before the Georgia Public Service Commission by the traffic manager of the North Carolina Pine Association, and it was proper to apply it to this North Carolina scale."

[fol. 986] The Witness: Well, I just want to say in that connection that there are various and sundry bases for figuring weights on logs measured per thousand feet. Of course, on the general principle of measuring logs, the

smaller the logs the more they weigh per thousand feet; and hence, the larger the logs are, the lower weight per thousand feet you will have. So that has to be taken into consideration; and it is never safe to assume that by adopting any fixed rate per thousand feet that we are accurately stating the weight per thousand feet. Now a good many people use twelve thousand pounds in the way that Mr. Price does, but as applied to the movement of the Brooks Scanlon logs that apparently is a little high.

Cross-examination.

(By Mr. Price:)

As to whether the exhibits, as filed by the Georgia Commission, give a complete picture of the log rates in effect today over the lines of the Atlantic Coast Line, of course we have other rates that you, Mr. Price, haven't shown, but in so far as they go, and without having checked the correctness of the figures, this is a pretty complete statement of our inter- and intrastate rates as they exist today, although we have some rates, even today—interstate rates—that are higher than our interstate mileage scale. What I mean to say is this: that our interstate mileage scale is not applicable and that the specific rates are somewhat [fol. 987] higher than the interstate mileage scale. Now, that is a part of the unification of rates that we are now making, and we, of course, will reduce this to whatever scale is accepted for informal application, and we propose this on the basis of the Alabama scale. This Alabama scale as applied to our movements would add something to the aggregate revenue of the Atlantic Coast Line Railroad system.

I will present for examination the actual memorandum of what transpired in Mr. Delano's car, to which reference has been made, for your examination.

(By Mr. Fred Davis:)

"Q. Mr. Perrin, you made some reference to the statements made by Commissioner Wells, the Chairman of the Florida Railroad Commission. Don't you also recollect in connection with that statement that Mr. Wells stated that

the Atlantic Coast Line had been invited for a period of six years to make any showing to the Florida Railroad Commission that the rate in Florida on logs was unreasonable, and that in the absence of such showing he concluded from that that the rate was reasonable?''

''A. I understood from Mr. Wells' statement that he interpreted their letters. I thought I would let the letters speak for themselves. Mr. Wells did make the statement.''

The purpose of my statement as to what Mr. Wells said was to draw attention to the fact that the Florida Commission's conclusion about the reasonableness of the rate was predicted on a cost study that was limited to train load [fols. 988–990] movement only. That was the purpose of all I said concerning Mr. Wells statement.

''Mr. Davis: That concludes our rebuttal testimony.''

''Examiner Brown: The Examiner rules that oral argument will be heard at this time'' (Tes. p. 913).

(Thereupon oral argument was heard before the Examiner. Tes. pp. 914 to 935, inclusive.)

(Whereupon, at 12:30 p. m., January 21, 1927, the hearing of the above-entitled matter was closed. Tes. p. 936.)

[fol. 991] Before Interstate Commerce Commission

Docket 18364

Georgia Public Service Commission

vs.

Atlantic Coast Line Railroad Company

Reply to Exceptions of Complainant to Report Proposed by Examiner R. M. Brown

Now comes Intervener, as of record and for his reply to Exceptions of Complainant to report proposed by Examiner, does respectfully say:

First

That statement embodied in first paragraph, Page 2, of Complainant's Exceptions, that ''Complainant in this

case represents all parties in Georgia having any interest in the movement of logs from Florida to points in Georgia, covered by this investigation,'' is incorrect and misleading, first, because the Interstate scale from Florida to Georgia is not of interest to Georgia manufacturers, and, second, because even if Georgia manufacturers were interested, this Intervener emphatically denies that Complainant represents all of such manufacturers.

[fol. 992] The record in these proceedings, Tr. 909, reflects the fact that on September 22, 1926, practically the entire log and lumber interests of the State of Georgia appeared before the Georgia Public Service Commission, the Complainant here, and formally and earnestly petitioned that Commission to withdraw this instant complaint.

Further, this intervener's Supplement to Exhibit 37, filed in these proceedings upon Complainant's request, indicates a membership of thirty-one (31) manufacturers in the State of Georgia, and it was in the interest of such manufacturers this intervener appeared, of such manufacturers two (2) appeared as witnesses for Complainant; these two manufacturers, however, maintain no individual traffic department in the conduct of their business, and their evidence clearly indicated their utter unfamiliarity with issues actually involved in these proceedings, they were only concerned with a reduction in the interstate rate as indicated in the first paragraph of Sheet 8 of Examiner's report.

Your intervener further desires to state that while this Association in representing Georgia lumber manufacturers generally, has not denied nor attempted to deny to any member manufacturer his inherent privilege of expressing his individual views, and when such views accord with our own, it is a satisfaction, but when there is a conflict it has no deterrent effect upon your intervener's procedure in attempting to protect to the best of its ability such member's interests, which he jeopardizes through lack of understanding or unfamiliarity with issues actually involved.

In view of such facts your intervener respectfully asserts its inability to reconcile statement of complainant hereinbefore referred to with the actual facts.

Second

That Complainant's statement on Page 2, second paragraph, alleging that record shows the interstate scale is unreasonably high as compared with the Florida intrastate [fol. 993] scale, the extent of such unreasonableness being predicated upon the ability of the interstate shipper to absorb such difference in transportation charges, is without merit, is a mere unsupported, visionary allegation.

The record clearly shows that the measure of the interstate scale has not had, and can not have, any bearing whatever upon such interstate transportation.

Third

That Complainant in third paragraph, Page 2, asserts: "The complaint of the Georgia Public Service Commission is not an attack on any rates which have been fixed or required by Railroad Commission of Florida," but gratuitously adds: "Such rates were condemned by the Florida Railroad Commission."

Your intervener respectfully asserts that Complainant having here thus expressed lack of interest in the Florida intrastate rates, and at no time expressing even an opinion as to what the interstate scale should be or even combating the record that any interstate scale must, of necessity, be of no service, occupies the unenviable position of not knowing what he is asking for, or what to do with it if he got it, reaffirms our belief and our assertion that Complainant's entire procedure has been without merit, is directly contrary to the best interest of the log and lumber interests of Georgia, is visionary in theory, unsound in fact, and has been and is, merely a vain and empty thing.

Further, it is emphatically denied that present Florida Railroad Commission or its predecessor, condemned the Florida intrastate rates; the record reflects the fact that Florida Railroad Commission has not only approved the Florida intrastate scale, but has enforced its continued maintenance, and in these proceedings continues to sanction and approve such scale.

Fourth

That as to first paragraph, page 3, of Complainant's Exceptions, your intervener asserts that Southeastern For-
[fol. 994] est Products Association, and its predecessor, Georgia-Florida Saw Mill Association, has served and represented Georgia log and lumber interests since its organization in 1899, appearing many times in behalf of Georgia log and lumber interests before the Georgia Public Service Commission and the Interstate Commerce Commission, and even at the present time is before the Georgia Public Service Commission in such Commission's Docket 15416 (2), and before Interstate Commerce Commission in their Dockets I. C. C. 16383 and I. & S. 2429.

Further, as hereinbefore stated, this intervener appeared in this instant proceeding in behalf of its Georgia membership, as indicated by Supplement 1 to Exhibit 37 of record, and again emphatically denies that Complainant appared for or was authorized to appear for Georgia manufacturers, and again respectfully calls Commission's attention to intervener's statement, paragraph 3, page 909, of record, to the effect that not only this intervenor, acting for its Georgia manufacturers, but practically all other log and lumber interests of Georgia, appeared before the Georgia Public Service Commission on September 22, 1926, and formally requested the withdrawal of this case, a stenographic record being made of such conference under Georgia Public Service Commission's Docket 16197.

The statement that this intervenor failed to comply with rules of practice in the matter of intervention is, of course, too utterly absurd to seriously consider other than to say your honorable Commission felt this intervener's interest was involved, as evidenced by the fact we were permitted to intervene as of record.

Fifth

That Complainant in last two paragraphs on Page 3, and first paragraph on Page 4, merely stated:

a. That Complainant was not attempting to say what should be the measure of the interstate scale.

b. That Complainant does not feel the Examiner is justified in recommending dismissal of the complaint.

[fol. 995] Your intervener in reply asserts that:

a. Complainant has no real interest in the interstate scale, for the record unquestionably proves there had not been, was not, and could not be a movement in interstate commerce.

b. The Examiner has not recommended a dismissal of the complaint, and, consequently Complainant's exception to such action need not be discussed.

Sixth

That Complainant on Page 4, paragraph 2, in its visionary wanderings finally says that: "Beginning at Page 10 of record it is shown that already the State of Georgia has lost some manufacturing interests to the State of Florida, and other manufacturers located in Georgia on the border of Florida were then negotiating with the view of moving their industries to Florida."

Your intervener asserts such a statement is both misleading and incorrect. One manufacturing interest, the Elberta Crate Company, of Bainbridge, Georgia, did establish a plant at Tallahassee, Florida, in 1922, over three years before this complaint was filed, and in as much as the raw material for use at the Tallahassee plant was adjacent to such plant, no doubt that factor entered into the decision to establish a plant there.

As to statements of Messrs. Charles I. Harrell and J. M. Simmons, appearing on Pages 14 and 15 of record, such statements were made, as Witness Price states on Page 12 of record, at July 25th hearing before Georgia Public Service Commission, at which time Messrs. Herrell and Simmons, as well as this intervener and various other Georgia log and lumber interests, were formally before the Georgia Public Service Commission objecting to and protesting against the proposed advance in the Georgia intrastate rates, and the threat to move to Florida was not because they would have lower rates in Florida, but because they could not survive in Georgia under the proposed advance in the Georgia intrastate rates.

[fol. 996] Such testimony is a matter of record of Georgia Public Service Commission under their Docket 15416 (2).

Regardless of these protests, however, the Georgia Pub-

lic Service Commission, under its order of April 15, 1925, as referred to by Witness Price in third paragraph, Page 12, of this record, advanced the Georgia State rates effective June 1, 1925, but because of continued insistent protests by the Georgia manufacturing interests the effectiveness of such order was postponed from time to time, until on Septmber 28, 1926, in a letter to the Georgia manufacturers, the Georgia Public Service Commission denied the petition of Georgia manufacturers to withdraw this instant case, but under same date issued a formal order rescinding its order of April 15, 1925, hereinbefore referred to.

Your Commission's attention is respectfully directed to the fact that this order of rescindment was of date of September 28, 1926, just twenty-two (22) days before this instant case was assigned for hearing, and was in part heard, and six (6) days after the formal appearance of Georgia mnufacturing interests before the Georgia Public Service Commission in protest against this instant case, at which time Georgia Commission's attention was brought to the fact that while such Commission, the Complainant in this instant case, was asking your honorable Commission to reduce the interstate rates from Florida to Georgia, under which they readily admitted no commerce had moved, and which in these proceedings it was proved no commerce could ever move, they, the Georgia Public Service Commission, at the same time, were proposing to advance the Georgia intrastate rates under which thousands of cars move annually and over the protests of the Georgia manufacturers, who plainly stated they could not operate under such proposed advances, and would be compelled, in such an event, to move their plants and their facilities to Florida, as stated by Witness Price on Pages 14 and 15 of this record.

[fol. 997] Seventh

That complainant in first portion of paragraph 2, Page 5, again asserts that Georgia Public Service Commission in these proceedings represented all Georgia shippers. It hardly seems necessary to again deny such an absurd statement, both the record and preceding answers to Complainant's Exceptions refuting such fact.

Eighth.

That Complainant errs in statement contained in second portion of second paragraph, Page 5, for the record abundantly substantiates the Examiner's opinion that Georgia shippers who testified for Complainant were only interested in a lowering of the interstate rate, and again errs in asserting that submittal by defendant carrier of a lower line of interstate rates presupposes an acceptance that existing interstate rates were unreasonably high.

For defendant carrier being aware that there had been no movement under existing interstate scale, and satisfactorily convinced by this record that there could be no movement under any scale whatsoever, could have no logical objection to accepting a lower interstate scale, especially in view of the fact that such lower interstate scale as was offered by defendant carrier had been found to be a reasonable interstate scale by your Commission in the several proceedings referred to by the Examiner on Sheet 10 of his report.

Ninth

That as to first paragraph, Page 6, this intervener makes no reply. That is a matter for Florida interveners to answer.

Tenth

That Complainant in last paragraph, Page 6, and first paragraph, Page 7, calls attention to testimony of Witness Perrin regarding single car movement.

[fol. 998] As we read the record such witness merely said that defendant carrier handled some single car lots. The point is, as the record clearly indicates, and the Examiner finds: "The movement in single car lots is unimportant."

Eleventh

That Complainant on Page 7, second paragraph, and Page 8, first paragraph, excepts to Examiner's finding "that relief is desired only with respect to rates from points lying North of Jacksonville, Gainesville, et cetera," and to Examiner's finding that "the complaint does not attack the South Florida rates."

Answering, your intervener asserts that Complainant's own witness expressed an interest only in rates from that portion of Florida adjacent to Georgia, and certainly by no stretch of even the Complainant's imagination can rates from or between points in South Florida be considered as involved herein.

Twelfth

That Complainant in second paragraph, Page 8, and first paragraph, Page 9, is evidently attempting to so express himself as to indicate exception to Examiner's finding that rate Exhibits filed by Complainant were not persuasive of the unreasonableness of the proposed interstate rates.

Obviously, Complainant errs in assuming, that, notwithstanding the fact that various interstate scales, as shown by Complainant, are lower than is the proposed interstate scale, the Examiner has affirmly found that the scale proposed by defendant carrier for interstate application is just and reasonable.

Also, it should be borne in mind that not only does the proposed interstate scale reflect reductions in the present rates, but in addition the Examiner precisely finds that the proposed interstate scale has not been shown to be unreasonable.

[fol. 999] In view of such finding, it is not relevant in these proceedings to determine what, if any, consideration should be given the various intrastate scales throughout Southern territory.

Thirteenth

That Complainant in last paragraph, Page 9, and first paragraph, Page 10, professes inability to understand Examiner's reasoning that "the force of the comparisons is lessened by the inclusion in the averages of the Florida-Georgia interstate rates which defendant proposes to reduce" * * *. We fail to see how Examiner's meaning could be more clearly stated, for the defendant carrier had, prior to the submittal of the comparisons by the Complainant, proposed to reduce the interstate scale and certainly the tender by Complainant of an Exhibit showing a scale that did not reflect the proffered reductions was not a true picture for comparative purposes.

Fourteenth

That in second paragraph, Page 10, Complainant excepts to Examiner's finding on Sheet 11 that "Complainant's Rate Expert admitted that the higher rates thus prescribed at the time were on a reasonably low basis," rates under consideration being Georgia State rates ordered upward by complainant in 1925.

This so-called "Exception" is merely playing with words, for, answering question of Counsel of intervening carriers,

Question. "And we are entitled to believe that based on that testimony, and their best information, the scale of rates which the Georgia Commission required the railroads to establish, represented its best judgment as to reasonable rates?"

Complainant's witness answered:

"At that time, yes sir."

If that did not mean, as Examiner states, that Georgia Commission considered such rates "on a reasonably low basis," it does not mean anything.

Further, in the same paragraph, Complainant says: "The order referred to by the Examiner was rescinded when [fol. 1000] this Florida situation was brought to the attention of the Georgia Commission."

Your intervener desires to bring to your Commission's attention that in the last sentence on Page 12, and the first sentence on Page 13 of record, Complainant states that: "This Florida situation was brought to its attention in July, 1925," while, as a matter of fact and of record, the order of rescindment was dated September 28, 1926, or fourteen (14) months later. Further comment appears unnecessary.

Fifteenth

That Complainant, Page 10, last paragraph, and first paragraph, Page 11, states, The question is:

a. What is a reasonable rate on logs between points in Florida?

b. What is a reasonable rate on logs between points in Florida and points in Georgia?

c. Why should not the Georgia manufacturer be placed on an equality with his Florida competitor?

Answering, your intervener respectfully avers:

a. That Florida intrastate rates in and of themselves are not in issue here.

b. Examiner has found that the interstate rates proposed by the defendant carrier have not been shown by the Complainant to be unreasonable.

c. The record abundantly shows that the Georgia manufacturer is not at a disadvantage as compared with the Florida manufacturer, and that such burden as is upon the Georgia manufacturer is occasioned by the intrastate Georgia rates over which the Complainant here, the Georgia Public Service Commission, has full jurisdiction.

Sixteenth

That as to Complainant's Exceptions on Page 11, last paragraph, and Page 12, first paragraph, this intervener makes no answer, assuming that interveners directly involved will reply.

[fol. 1001]

Seventeenth

That as to Complainant's Exceptions on Page 12, last paragraph, and Page 13, first paragraph, Examiner's conclusion is fully supported by the record.

Eighteenth

That as to Complainant's declination, Page 13, second paragraph, to discuss Examiner's reference to outbound movement by water, asserting such rates are not here involved, your intervener asserts that Examiner did not refer to the water rates outbound as controlling the measure of inbound rail rates.

Nineteenth

That at Page 13, last paragraph, and Page 14, first paragraph, the burden of Complainant's Exception is that, Examiner finds that there is within the record no proof of discrimination.

Certainly the record fully substantiates such finding. Apparently Complainant is unable to understand your Commission's expression in 81-I. C. C. 346, that: "A finding of unlawful discrimination cannot be predicated on a mere assumption or assertion of its existence."

Twentieth

That on Page 14, second paragraph, Complainant, in excepting to Examiner's citation of decision of Supreme Court in Wisconsin Railroad Commission, v. C. B. & Q. Railroad Company, 257 U. S. 563, merely illustrates his inability to comprehend the meaning of the decision cited.

In this decision the Court in substance said:

a. That the Commission is given unified control of interstate and intrastate commerce only to the extent of maintaining efficient regulation of interstate commerce.

b. The Court's conclusion does not involve the general regulation of intrastate commerce.

[fol. 1002] c. Action of the Commission should be directed towards and its authority extended to intrastate commerce only when such intrastate commerce affects interstate commerce to the extent of creating a real discrimination to a substantial degree.

Your intervener respectfully asserts that no choice of words could possibly have more clearly defined the meaning of the decision cited, and it is obviously unnecessary to further dwell thereupon.

Twenty-first

That Complainant, beginning at second paragraph, Page 15, and continuing through Page 16, first paragraph, merely expresses his customary disagreement, or rather dissatisfaction, with the record in the case, for such record abundantly shows that not only interstate commerce remained and remains uninjured to a material extent, but it plainly indicates that such interstate commerce has not been affected, nor can it be affected to any extent, and, further, as hereinbefore stated, your protestant emphatically denies,

and the record fully substantiates such denial, that the level of the interstate scale has caused any Georgia manufacturers to leave that State and move their operations to Florida, nor is there the slightest evidence in this record that in the most remote way could indicate that Georgia manufacturers on the border line of Florida have suffered any financial loss whatsoever by the existing transportation charge adjustment.

Twenty-second

That Complainant in last paragraph, Page 16, and its continuation on Page 17, makes two assertions, viz:

a. That there is a large movement of logs between points in Florida not covered by these approximate cost studies.

b. That no evidence has been submitted showing there is any difference in the transportation conditions from Florida to Georgia as compared with the Florida intrastate movement.

[fols. 1003 & 1004] Answering, your intervener asserts:

a. That there is not a large movement of logs between Florida points other than as covered by the cost studies in these proceedings, as the record fully indicates.

b. That the record fully substantiates the fact that there is not, and there has not been, an interstate movement, and, consequently, there could not have been, nor is there a similarity of transportation.

Conclusion

Your intervener having fully answered Exceptions of Complainant, respectfully submits that Examiner's report being in full harmony with the record, is unquestionably sound and proper, and should be upheld.

Respectfully submitted.

Southeastern Forest Products Association (Formerly Georgia-Florida Saw Mill Association), by J. S. Farish, Traffic Manager.

Dated at Jacksonville, Florida, September 26, 1927.

[fol. 1005] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

REPLY OF JACKSONVILLE TRAFFIC BUREAU, INTERVENOR, TO EXCEPTIONS TO PROPOSED REPORT

Comes now the Jacksonville Traffic Bureau, an Intervener in the above entitled case, and for its reply to the exceptions filed to the report of Examiner R. M. Brown, by the Georgia Public Service Commission and the intervening carriers, respectfully represents as follows:

A. Reply to Exceptions of Georgia Public Service Commission

1. This intervener takes issue with the very first statement on page 2 of complaint's exceptions wherein it states that "The Georgia Public Service Commission, complainant in this case, represents all parties in Georgia having any interest in the movement of logs from Florida to points in Georgia, covered by this investigation." This statement is not borne out by the record. In fact, the record shows that the Georgia-Florida Sawmill Association, one of the [fol. 1006] interveners, had a membership composed largely of Georgia mill operators. The record also shows that mill operators from all over the State of Georgia requested Chairman Perry to withdraw the complaint after it was filed. As was pointed out in the brief filed by this Intervener, the Georgia Public Service Commission closed its case at the Valdosta hearing, without showing that it represented a single shipper of logs in the State of Georgia, and without offering a single witness who was engaged in shipping logs.

2. In the second paragraph on page 2 of the exceptions, Chairman Perry says: "It is alleged, and the record shows that the interstate rates on logs charged by the Atlantic Coast Line Railroad from points in Florida to points in Georgia are unreasonably high as compared with the rates charged by the Atlantic Coast Line Railroad for handling logs intrastate between points in Florida, to the extent that the Georgia manufacturer is prevented from purchas-

ing logs in Florida, the difference in the rates being too great for the Georgia man to absorb against his Florida competitor."

This intervener is unable to determine just what the Chairman means by this very involved sentence. If he intends to imply or state that the record establishes the fact that the Florida intrastate rates have anything to do with the Georgia manufacturers' inability to purchase logs in Florida, this we emphatically deny. The record clearly establishes that there is no Florida timber available for purchase by Georgia mills. The record also shows that if there were available timber for purchase by Georgia interests, they would move their mills to the timber whether the mills were located in Georgia or in Florida, rather than to attempt to transport logs even on rates as low as the Cummer scale.

3. At the bottom of page 2 of the exceptions we find the following: "The rates being charged by the Atlantic Coast [fol. 1007] Line Railroad in Florida, being voluntarily established by that line, and its predecessors, and were condemned by the Florida Railroad Commission, but continued in force voluntarily by the Atlantic Coast Line Railroad." The Florida Railroad Commission, both at the hearings in this case and in its brief, emphatically denied that the Commission had ever condemned these rates but had on the other hand, after investigation, reached the conclusion that the rates are reasonably compensatory. The Commission's attention is invited to the statement of Chairman Wells, beginning at page 668 of the record and the statement of the Florida Railroad Commission on pages 3 to 5 of its brief in this case.

4. At page 3 of the exception, Chairman Perry takes issue with the Examiner in the following extract from his proposed report: "Complainant's evidence was mainly in support of its allegations under Sections 3 and 13. It did not attempt to indicate what would constitute a reasonable interstate scale in and of itself. In this connection it was stated that complainant was not attempting to say what should be the measure of the interstate rates, but that if the Florida rates were found just and reasonable, they should

be made to apply on log traffic between Florida and Georgia." The Chairman remarked that the Georgia Commission is not familiar with any rule of the Interstate Commerce Commission or any law that requires the Complainant to suggest to the Commission what rates it should use to remove discrimination. In this connection, your attention is invited to Rule 3, Paragraph "N" of the rules of practice, which reads as follows: "The complainant should contain the issue as to what should be the rate, fare or charge, thereafter to be observed in order to remove such advantage or prejudice." Again, Rule 14, Paragraph "A" requires: "That the brief should include requests for such specific findings as the party thinks the Commission should make." The Florida interveners tried repeatedly during the hearings to get Chairman Perry or his rate expert to [fol. 1008] state what they considered a reasonable rate for interstate application. They repeatedly refused to answer this question directly, contenting themselves with saying that if the Florida intrastate rate is reasonable for intrastate application, it should be made applicable to intrastate traffic. Such evasion convinces this intervener that the sole purpose of this complaint was an endeavor on the part of Mr. Perry to justify increases in the Georgia intrastate rates, which his Commission had authorized and afterwards rescinded, in order that it might be consistent with the position taken in this case. This conclusion is based upon the fact that the order was not rescinded for some time after this complaint was filed.

5. One page 4 of the exception, the Chairman in remarking on the statements of the Examiner that: "No movement under the interstate rates was shown, and complainant admits that there is none" says: "This last statement explains fully the very reason that this complaint was brought. Testimony of witness for the Georgia Public Service Commission, beginning at page 10 of the record shows that already the State of Georgia, has lost some manufacturing interests to the State of Florida and other manufacturers located in Georgia were then negotiating with a view of moving their industries to Florida on account of this rate situation." We believe that the record itself will refute this statement, and invite the Commis-

sion's attention to the testimony of the witness referred to by Chairman Perry. On page 12 of the record, Witness Price testified that in 1925 the Georgia Public Service Commission entered a final order permitting the carriers to advance the intrastate rate on logs in Georgia to approximately the same level as the so-called Alabama-Georgia scale. Quoting further from Witness Price on the same page, he said: "At the insistence of shipper representatives, the effective date of this order was postponed until August 1st, 1925, and a hearing had in July of the same year in order that shippers might have the opportunity of submitting evidence as to why the order should not be [fol. 1009] postponed further or rescinded." Witness Price stated further that "At this July, 1925 hearing, this Florida situation which we have under review in this case was brought to the attention of the Georgia Commission."

Now, let us determine from the further testimony of Witness Price, whether there is any justification for the statements in the exceptions that it was because of this Florida situation that the above order of the Georgia Commission was rescinded, and the complaint in this case brought. On pages 13 and 14 of the record, Witness Price said that at this July, 1925 hearing of the Public Service Commission certain individuals, among them, Mr. W. E. Gardiner, Mr. J. S. Farrish, Mr. Moore and others, testified that if the Georgia Commission increased its rates as then proposed, such increases would probably drive industries located in Georgia to the neighboring State of Florida. We have searched the record in vain, for any statement of Witness Price or of any other witness, which would justify the statement in the exceptions that industries have been driven from Georgia because of the Atlantic Coast Line log rates in Florida. Again, it is evident that Chairman Perry is endeavoring to use the Florida situation for the purpose of justifying increases in the Georgia intrastate log rates which the Georgia Commission had authorized.

In this connection we wish to call attention to the statement of Chairman Perry in Paragraph 2 at page 10 of his exceptions, which is as follows: "All rates prescribed by the Georgia Commission are maximum rates and as testified to by the witness of the Georgia Commission the order referred to was rescinded, when this Florida situation was

brought to the attention of the Georgia Commission, etc." Let the record speak for itself on this point. According to Witness Price, (bottom of page 12 and top of page 13 of the record) as above stated, the Florida situation was brought to the attention of the Georgia Commission in July, 1925. The complaint in this case was filed April 23rd, 1926, and the rescinding order of the Georgia Commission is dated [fol. 1010] September 28th, 1926, less than a month prior to the Valdosta hearing. It was more than a year after the Florida situation was called to the attention of the Georgia Commission, before the order in question was rescinded by the Commission, and it was several months after this complaint was filed before the rescinding order was issued. As before stated, this Intervener can only draw the conclusion from this evidence that the only reason the order in question was rescinded at all was because the complaint was filed and the Chairman of the Georgia Commission could not very consistently ask for lower rates for interstate application than he had prescribed for intrastate application.

6. On pages 4 and 5 of the exceptions, Chairman Perry states that Witnesses Giddens, Davies, Jackson and Simmons all testified to the effect that they were not shipping logs from Florida to Georgia, but had attempted to make purchases in Florida, but were prevented from doing so on account of the unreasonably high rates interstate, as compared with the intrastate rates in Florida. Both Witnesses Simmons and Jackson testified that if the Florida intrastate rates were raised to the level of the present interstate rates they could not buy stumpage in Florida and manufacture it in Georgia. It is true that Witness Giddens insisted that he could purchase such stumpage and manufacture it in Georgia if the Florida intrastate rates were raised to the level of the interstate rates, but as will hereafter be explained in this reply, his testimony can only be considered as opinion testimony because of its indefiniteness and his failure to designate any specific tract that he could purchase under any level of rates. In other words, Mr. Giddens makes out a purely hypothetical case entirely unfounded on fact. The testimony of Mr. Davies is too indefinite and vague to warrant further comment.

7. Chairman Perry states on page 5 of his exceptions: "That the law is very clear; that when the disparity in rates is so great as to prevent the free movement of interstate [fol. 1011] commerce, it works a discrimination and should be removed." That is exactly what the record in this case does not show. On the contrary, it shows that geographical location, distance from tide water, and other physical conditions make the interstate movement of logs impractical and impossible. Surely Chairman Perry cannot hope to remove these differences by rate adjustments.

8. On sheet 8 of the Examiner's proposed report, he states that Georgia shippers testified, in general terms, that there was available timber which could be purchased and transported to mills in Georgia, but the location of such timber was not revealed. Chairman Perry, at page 6 of his exceptions, questions this statement by referring to the testimony of Witness Jackson at the Valdosta hearing in which he said he was negotiating for the purchase of a tract of one hundred and ninety million feet of timber in Florida, known as the Epinger-Russell tract, and that the witness gave the exact location of this timber. As later developed at the Jacksonville hearing, this tract of timber had been on the market for many years and was so located that even if Mr. Jackson had purchased the timber, it would have been impossible for him to transport it in the form of logs to Valdosta for manufacture even on rates as low or lower than the Cummer scale. Mr. Goethe, who purchased the timber testified at the Jacksonville hearing that he bought the timber nearly ninety days prior to the Jacksonville hearing, which would be just about the time of the Valdosta hearing. Thus it would appear that the timber had already been purchased when Mr. Jackson testified, for transactions of this size are not made in a day. The record also establishes that the purchaser of this timber moved his mills into the timber although one of his mills was then located much nearer the timber than Mr. Jackson's mill at Valdosta. We have merely mentioned this feature of the exceptions to emphasize the fact that the refusal of the other witnesses for the Georgia Commission to designate the timber tracts they could purchase, because they feared the Florida interests might take advantage of the information thus obtained, [fol. 1012] can be nothing but mere subterfuge.

9. At the bottom of page 6 of the exception, Chairman Perry questions the following statement of the Examiner: "Most of the Florida Intrastate Log Traffic is in train loads. The less than train loads movement is unimportant." Mr. Perry refers to the testimony of Witness Perrin, of the Atlantic Coast Line to refute this statement. We submit that neither Witness Perrin, nor any other railroad witness gave any testimony showing the relative importance of car lot movements. On the other hand, the Florida witnesses, all testified that the entire movement to their mills was in train loads. So far as this record shows the Examiner is correct in stating that the "less than trainload movements of logs" in Florida is unimportant. The complainant contends, at the bottom of page 7 of its exceptions, that the Examiner had evidently overlooked the testimony of the Witness for the Georgia Public Service Commission at page 25 of the record which states that "The complaint of the Georgia Commission is not confined to any particular manufacturing point in Florida, but Jacksonville and Perry were only used to illustrate the conditions as they exist." If there is anything in the record dealing either directly or indirectly with the South Florida rates, this Intervener is unable to find it.

On page 8 of the exceptions, Chairman Perry discusses the Examiner's summary of the evidence with respect to some of the rate comparisons. After reading his discussion of the Examiner's findings, we are unable to determine what the basis of his exception is, or what argument he intends to advance in support of this exception. Therefore, we are unable to reply thereto.

10. On page 10 of the exceptions, exception is taken to the statement of the Examiner that: "Complainant's rate expert admitted that the higher rates thus described, at this time, were on a reasonably low basis." The Examiner had [fol. 1013] reference to an order issued by the Georgia Public Service Commission in 1925, which was later rescinded. The complainant denies that the rate expert of the Georgia Commission ever said that the rates were on a reasonably low basis, but admits that he did say that at the time these rates were authorized by the Georgia Commission, they represented that Commission's best judgment as to reasonable rates. It states further that all rates pre-

scribed by the Georgia Commission are maximum rates, and would have us draw the conclusion therefrom that there is a wide difference between reasonably low rates and reasonable rates, in the judgment of the Georgia Commission. Without wishing to be facetious, we doubt whether the Georgia Commission ever fixed a maximum rate, that it did not consider reasonably low.

At pages 10 and 11 the complainant discusses the Examiner's findings to the effect that an increase in the Florida rates, to the level of the proposed Georgia scale, would unnecessarily destroy large investments in Florida, without being of any benefit to any Georgia operator. The record is very persuasive of this fact, and the probity of the evidence offered in support of this contention is not questioned by the Georgia Commission. It is unthinkable that the Interstate Commerce Commission would want only to destroy the enormous investments in Florida upon a mere theoretical showing by the Georgia Commission that, because of the lower rates in Florida, the Georgia manufacturer is prejudiced, when there is not one iota of evidence in the record to show that any competition exists or could probably exist, and where any Georgia operator would be benefitted.

11. At the last paragraph of page 11 of the exceptions, in speaking of the Examiner's reference to the tremendous costs of moving the Brooks-Scanlon Corporation from Eastport, Florida, to its timber holdings, (a fact which was clearly established in the record), the Chairman, without taking any exceptions to the remarks of the Examiner, or his conclusions thereon, attempts to draw a special deduction [fol. 1014] to the effect that the examiner intended to indicate that the reasonableness of rates might be determined by the cost of construction. Obviously, there is no word in the record which warrants any false assumption of this kind, and obviously the Examiner had no such fal-acious theory of rate making in his mind. The Chairman is unable to understand how it could be possible to cost more for dismantling and rebuilding, as was stated by the Examiner, than it cost to build the mill originally. It would seem that it is unnecessary to discuss this proposition since anyone knows that labor and material today are many times higher than they were when the mill at Eastport was built and

that many elements of expense would be incurred in the dismantling and rebuilding of a mill that were not elements in building the original mill. For instance, the stoppage of business for a period of approximately one year, would be an enormous element of damage which could only be approximated. Numerous other factors of damage would be encountered, in the removal of the homes of the working force, the employment and breaking in of new labor and employees, and many other items of expense, too numerous to enumerate.

On page 13 of the exceptions, the complainant makes reference to the relatively low water rate, referred to by the Examiner. And says: "The outbound rates on lumber are not involved in this complaint in any way, whatever, and we will therefore not discuss this feature." The only reason for referring to the outbound water rates on lumber was to explain the location of the mills, at tidewater. The record shows that if these mills were to be reconstructed they would be built in the timber itself, regardless of freight rates on logs. The evidence also shows that the mills now located at tidewater, could not exist, even under the Cummer scale, except for their tide water locations.

12. At pages 17 and 18 of the exceptions, Chairman Perry would convey the inference that the Examiner was [fol. 1015] influenced in his decision by the size of the mills in Florida, as compared to those in Georgia. Quoting from the exceptions, he says: "We submit that the testimony of a manufacturer in Georgia, although his output of timber may not amount to more than one hundred thousand feet per day, is entitled to just as much consideration as the testimony of a Florida manufacturer whose output is a million feet of lumber a day." This intervener believes that such an intimation is entirely unfair and wholly unfounded. The difference between the testimony of the Florida operators and that of the Georgia operators was that the former testified about facts, and the latter about theories. It is obvious that the reference here made to large and small mills is in the hope of securing sympathy. There are large and small mills in both states.

13. On page 14 of his exceptions, Chairman Perry refers to the decision of the Supreme Court in Wisconsin Railroad

Company vs. C. B. & Q. Railroad Company, 257 U. S., 563, which was submitted by the Florida interveners in justification of their contention that your Honorable Commission is without power to regulate intrastate commerce as such, unless such commerce constitutes a restraint or burden on interstate commerce. Mr. Perry attempts to discredit the value of the quoted extract from this Supreme Court decision as having any application to the facts in this case. He contends that if there is a disparity in rates, then there should be a finding of disparity, whereas, the Supreme Court said that there should be a substantial disparity, which operates as a real discrimination against and an obstruction to interstate commerce, before the Interstate Commerce Commission could assume jurisdiction over intrastate rates. This Intervener freely admits that there is a difference in rates but this difference does not result in existing or potential discrimination against any Georgia shipper.

14. On pages 15 and 16, Chairman Perry says he is thoroughly in accord with the principle expressed in the Hunter [fol. 1016] Bros. case, which is to the effect that before the Interstate Commerce Commission can require a change in the intrastate rate, it must appear that the intrastate rate affects interstate commerce injuriously, to a material extent. However, he says that this principal does not apply to the instant case. This rather unique position is contradictory. The Chairman says that "If the effect of a rate is such as to cause manufacturers to leave one state and go to another, and is causing other manufacturers located on the border line of the State, heavy financial loss as was proven in this case, then it must follow that it is injurious to a material extent. Such is the overwhelming evidence in this case."

If such were the case, we might be inclined to agree with Chairman Perry in his conclusion. But as has heretofore been pointed out in this reply, there are no such facts in the record. The record does not show that a single manufacturer in Georgia moved from Georgia to Florida or declared their intention of moving to Florida on account of the Atlantic Coast Line log rate. The record is most plain that the only reference to moving industries from Georgia

to Florida, was made by witnesses at a hearing before the Georgia Public Service Commission more than a year before this case was heard, and the only reference to industries moving from Georgia to Florida was the statement of certain gentlemen to the Georgia Commission that if that Commission raised its then intrastate rate as it proposed to do, it would drive industries from Georgia to Florida. It is absolutely unfair for the Chairman to state, as he has in several places in his exceptions, that industries have been driven to Florida because of the Florida intrastate rate when by the words of his own witness, if any industries were driven to Florida, it was because of his purpose to increase the Georgia rate.

15. On page 16 of the record, Chairman Perry says that the rates proposed by the Examiner for interstate application from Florida into Georgia, and his recommendation [fol. 1017] that no finding be made against the Florida intrastate rates, does not relieve the complaint. Mr. Perry states that witnesses for the Georgia manufacturers testified that the rates proposed by the Atlantic Coast Line, which are also those proposed by the Examiner, are entirely too high. In view of these comments of Mr. Perry, we are wondering what will satisfy the complaint. If the proposed reduction will not satisfy, why has he refused so persistently to disclose what he wants the Interstate Commerce Commission to do in this case. It seems rather a paradox, this statement of the Chairman, that these proposed rates of the Examiner are too high, when it is remembered that they are practically the same as the intrastate rates originally authorized by the Georgia Commission, and which were rescinded as a result of a filing of this complaint.

[fol. 1018] B. Reply to Exceptions Filed by Intervening Carriers

The Seaboard Air Line and other intervening carriers in their exceptions to the proposed report set forth first a statement of their grounds of intervention. This statement is not an exception to the proposed report and does not purport to question any statements of fact or position of the intervening railroads in this case. Therefore a reply

to this section of their exceptions is unnecessary other than to point out that the intervening railroads oppose the adoption of the Florida Intrastate rates for Interstate application, whether for the purpose of establishing reasonable maximum rates or for the purpose of removing undue discriminations. Under the Examiner's conclusions the rates proposed for interstate applications are rates which these intervening railroads subscribe to, therefore this particular position of these interveners has been satisfied and they can have no further fear that the intrastate rates will be prescribed for interstate application. Insofar as the issue of unjust discrimination is concerned the Examiner's Report finds in favor of the defendant railroad and the intervening defendant railroads, that there is no unjust discrimination of any kind under the issues of this complaint. Therefore it will be seen that the Examiner's Report satisfies completely the two grounds upon which these carriers intervention were based. Since their intervention is satisfied in all respects by the Examiner's findings, we wonder why they thought it necessary to make this statement of their position in the nature of an exception.

These petitioning railroads oppose the maintenance of the Atlantic Coast Line Florida Intrastate rates and mention this in their exceptions. The complaint filed by the Georgia Commission does not assail the Florida intrastate rates as being unreasonably low. This issue is not in the proceeding and the petition of these interveners cannot so broaden the issues as to bring this in question. No one here has asked the Interstate Commerce Commission to [fol. 1019] fix minimum reasonable rates on Florida Intrastate traffic. On this, the Commission could not entertain such an issue standing by itself. It could arise only in connection with the Section 13 allegation. If these interveners find fault with the measure of the Florida intrastate rate, their remedy must be sought through the Florida Railroad Commission and not through the Interstate Commerce Commission.

The concluding paragraph under their heading number one, found on page 3 of their exceptions, is a mere summary of the evidence which they introduced. They do not ask that any additional facts be stated in the report, and do not call to attention any errors or omissions in the report,

erefore, this cannot be regarded as an exception. It is a ere statement in lieu of their failure to file a brief.

2. Intervening Defendants Exceptions Roman Numerals vo, pages 4, 5, 6 and 7, bring forth only one exception to e language of the Examiner's Report. They object to the ding that the revenue from the Florida Intrastate Log affic, while relatively low, is "reasonobly compensatory." terveners ask that this finding be eliminated from the eport. Particular attention is called to this significant fact at the elimination of these two words is the only exception which the interveners make to the facts or findings of e Examiner's Report.

The Jacksonville Traffic Bureau respectfully submits that ere is conclusive evidence of record in support of the xaminer's finding that the Florida rates are reasonably mpensatory. This evidence is set forth at length in briefs Florida interests, particularly the brief of the Railroad ommission of Florida, which is hereby referred to and eed not be repeated. We shall merely recall the fact that aborate cost figures were submitted by the sole defendant this case, and that these cost figures were broken down, nalyzed and reconstructed by Witness, Pettijohn, Expert ccountant for the Florida Railroad Commission. Mr. ol. 1020] Pettijohn's figures show conclusively that the venue under the Florida log scale yields a substantial argin over and above the cost of this service. Even the oast Line cost studies show a margin of $1.34 over the timated costs and Mr. Pettijohn's figures show a margin $5.85 over and above the cost of service.

It is true that these cost studies relate primarily to train ad movements as stated by intervening carriers on page paragraph number 3, of their exceptions. The cost figres were based upon train load movements because the ovement to Jacksonville is the most important movement traffic within Florida, which is involved in this case. The eorgia Commission has predicated the issue of discrimation upon a hypothetical movement in the future from orth Florida tracts of timber on Atlantic Coast Line to eorgia mills on the one hand as compared with rates from e same tracts of timber in North Florida to Jacksonville the other. Therefore, all of these cost figures are based on the most important actual movement involved in this

case, which was the only proper thing to do. The movement in single car lots between other points in the State certainly cannot be regarded as an important factor in this case. There is no evidence whatsoever to show what the volume of the movement of the single car lots is on the line of the Defendant, Atlantic Coast Line, or any other line. Therefore, it would have been illogical to attempt to estimate the cost of movement in single car lots. Evidently this is what the Examiner had in mind when he referred to the movement to Jacksonville as the important movement, and when he referred to the movement in single car loads as being unimportant.

The intervening lumber and shipping interests of Florida respectfully submit that the Examiner's finding in respect to the compensatory feature of these rates is amply supported by the record and that there is no merit in the intervening carriers' request for the elimination of this finding from the report.

[fol. 1021] Attention is called here to the fact that the real defendant in this case has tacitly accepted this finding of the Examiner as correct, and having done so it is inconceivable that an intervening carrier on behalf of that defendant could take exceptions to a finding which the real defendant has accepted as being founded in fact.

The Commission's attention is especially directed to the fact that this exception is taken without the interveners' having knowledge of the actual cost of this service over the line of the Atlantic Coast Line, and without attempting to disapprove the cost figures introduced either by the Atlantic Coast Line or the Florida Railroad Commission's Expert Accountant. This single exception which these intervening carriers have taken would have only a remote bearing upon the disposition of this case, even if it had merit. As stated hereinbefore, no one has asked the Interstate Commerce Commission to prescribe minimum rates on Florida Intrastate traffic. There is no issue here which would make it necessary for the defendant or interveners in their behalf to prove that the Florida rates do not cast a burden upon other traffic. The fact that they held their rate over and above the cost of the service is sufficient proof upon that point even if it were brought in issue.

On page 7, the intervening carriers state that there is a very substantial movement in single car lots, etc. As stated hereinbefore, this intervener questions the accuracy of this statement and challenges these interveners to show any evidence in the record in support of the statement that there is a substantial movement in single car lots.

A statement was made that there are movements in less than train loads, but this record can be searched in vain for any evidence to bear out the statement that there is a very substantial movement in single car lots.

On page 108 of the Record, the Seaboard Witness, when questioned as to whether the logs move in solid trains or in separate carloads, answered that he would prefer that the Coast Line Witness testify as to that.

[fols. 1022 & 1023] The intervening carriers state that the Florida Railroad Commission condemns the defendant's log rates and refers to them as being confiscatory. We emphatically deny this statement. Explanation of similar statements made by Chairman Perry, has been made in the forepart of this reply. Here it is only necessary to point out that the Florida Commission did not make such a finding but after mature consideration approved the rates. In this connection reference is directed to a statement of the Chairman of the Florida Railroad Commission beginning on page 3 of the brief filed by the Florida Railroad Commission in this case.

Pages 89, 90, 96 and 142 of the record set forth the object of the railroad interveners in taking part in this proceeding. These intervening carriers, in stating the object of their intervention testified that it would be detrimental to their interests to have the Commission prescribe an unduly low level of rates interstate from Florida into Georgia via the Atlantic Coast Line. That this was the sole purpose of the intervention of these carriers clearly appears from their own statements in the record and we therefore submit that the only interest of the intervening carriers in the log rate applicable over the Atlantic Coast Line in Florida is that it be not extended to their lines.

This intervener having fully answered the exceptions filed by the Georgia Public Service Commission and the intervening railroads, respectfully submits to your Honor-

able Commission that neither one of these exceptions has in a single instance, successfully opposed a single statement or finding in the Examiner's proposed report.

Respectfully submitted.

Jacksonville Traffic Bureau, E. C. Green, Manager.
J. O. Cassidy, Attorney for Intervener.

[fol. 1024] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

EXCEPTIONS TO EXAMINER'S PROPOSED REPORT, FILED ON BEHALF OF SEABOARD AIR LINE RAILWAY COMPANY, CENTRAL OF GEORGIA RAILWAY COMPANY, SOUTHERN RAILWAY COMPANY, AND GEORGIA, SOUTHERN & FLORIDA RAILWAY COMPANY, INTERVENERS.

Come now the Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company, and Georgia, Southern & Florida Railway Company, interveners, and for their exceptions to the report proposed herein by Examiner R. M. Brown respectfully [fol. 1025] say as follows:

I

In the intervening petition filed on behalf of these carriers, the grounds of the proposed intervention and the nature and extent of the petitioners' interest in the proceeding were set forth as follows:

"1. Petitioners are common carriers by railroad and as such are engaged, according as their respective lines are located, in the transportation of logs in interstate commerce between points in the State of Florida, on the one hand, and point in the State of Georgia, on the other, as well as in the intrastate transportation of such traffic within the States of Georgia and Florida, respectively, and, as such common carriers, petitioners have an interest in the general level of the rates, both interstate and intrastate, in said territories including such rates as may be established, or may be required to be established, by the Atlan-

tic Coast Line Railroad Company, defendant in this case, for application over the lines of said company:

"2. That petitioners have been and are opposed to the establishment and maintenance by said Atlantic Coast Line Railroad Company of the rates now maintained by it for intrastate application on logs within the State of Florida, and consider these rates to be unduly and unreasonably low [fol. 1026] and detrimental to the interests of these petitioners; and that petitioners are opposed to the continuance of the said intrastate rates in Florida or to the adoption of these rates for interstate application between points in Florida and points in Georgia, via the lines of the Atlantic Coast Line Railroad Company or otherwise, and whether for the purpose of establishing reasonable maximum rates under Section 1 of the Act, or for the purpose of removing undue discrimination as complained of in the complaint filed in this proceeding."

At the hearing evidence was offered on behalf of these interveners, showing that they respectively operate in the same general territory that is served by the lines of the defendant, the Atlantic Coast Line Railroad Company; that upon their respective lines of railroad in this territory each of these interveners now publishes and maintains scales of rates on logs in carloads for interstate and intrastate application, respectively, including intrastate rates within the State of Florida as well as in such other states as Alabama and Georgia, and interstate rates between Georgia, Florida and other states, which scales of rates, both state and interstate, are invariably on a higher level than the present intrastate rates of the Atlantic Coast Line Railroad Company in Florida; and that the rates so maintained by these interveners are reasonably low (witness Abrams, Potter and Chancellor; Exs. Nos. 2 to 8, inc., Tr. pp. 88, et seq.)

II

[fol. 1027] In the report, after referring to certain cost studies relating to the present intrastate log rates in Florida of the defendant, Atlantic Coast Line Railroad Company, the examiner finds and states in reference to these rates:

"Careful consideration of these studies, however, warrants the conclusion that the revenue received by defendant

from its Florida intrastate log traffic, while relatively low, is reasonably compensatory. Under the circumstances a finding is not justified that the Florida rates are so low as to cast an undue burden on interstate commerce'' (sheet 9).

The interveners take exception particularly to the foregoing finding that the revenue received by defendant from its Florida intrastate log traffic is ''reasonably compensatory.'' They submit that this proposed finding is unsustained by the evidence, and that if it should be adopted and announced by the Commission such finding would be seriously prejudicial to the interests of these interveners, as well as all other carriers that are engaged in the transportation of logs in the territory herein involved. In support of this position the Commission's attention is respectively directed to the following:

1. For interstate application by the defendant from points in Florida to destinations on its lines in Georgia, the examiner finds that defendant's proposed scale (as shown on sheet 15) will constitute a reasonable maximum scale for the future. The examiner further correctly finds [fol. 1028] that the interstate scale thus approved is the same scale that is now in effect intrastate in Alabama, and that the rates are the same, or substantially the same, as those of which the reasonableness has been approved by this Commission in Pierpont Mfg. Co. v. S. R. Co., 50 I. C. C. 81; Southern Veneer Asso. v. A. C. L., R. Co., 62 I. C. C. 669; and Southern Cotton Oil Co. v. A. C. L. R. Co., 120 I. C. C. 190. On sheet 6 of the reprt are shown the present intrastate log rates maintained by the Atlantic Coast Line in Florida, which rates were originally established and have since been continued by that carrier for the reasons and under the circumstances that were explained on its behalf in this proceeding. It will be observed that for a haul of 150 miles in Florida, the rate under this scale is 3.4 cents per 100 pounds, and the revenue accruing on a car of 50,000 pounds would be only $17. This rate, which the examiner finds to yield ''reasonably compensatory'' revenue, is less than half of the interstate rate of 7.5 cents which the examiner finds, on the other hand, to be not unreasonable for an interstate haul of 150 miles from Georgia into Florida. In other words, the interstate rate, which

is correctly found to be not unreasonable, is about 120 per cent higher than the rate which the examiner finds to be "reasonably compensatory" for defendant's intrastate movement for the same distance in Florida. It is in evidence, moreover, that the defendant's present rates on logs in Florida for distances up to 170 miles, which are based upon the so-called "Cummer Scale," are far below the [fol. 1029] rates for distances beyond 170 miles, these latter being the Class P rates as fixed by the Florida Commission; and further, that for a distance of, say, 50 miles these intrastate rates on logs in Florida yield per car revenue equivalent to less than one-half of the revenue for a similar haul under defendant's present interstate rates on logs; about one-third of the revenue on a similar movement of brick; considerably less than one-third of the revenue on either sand, gravel or lime; and less than one-fifth of the present revenue under the interstate rates on cement.

2. On sheet 8 of the report, it is pointed out that the cost study submitted by defendant indicated "a margin of $1.34 per car over the estimated cost of service." It is further stated that:

"Defendant stresses the point that its study covers trainload movements only, and that if the haul were in less than trainloads the cost of service would be higher. Most of the Florida intrastate log traffic is in trainloads. The less-than-trainload movement is unimportant."

The examiner is correct in stating that the cost study submitted by the defendant related to movements in train load quantities only. It will be observed, however, that although the rates were originally contemplated for application on trainload movements only, they were in fact made applicable on all movements whether in trainloads or in single carlots, for the reasons mentioned on sheet 4 of the report. The rates, therefore, are applied at the present time on single cars as well as on trainloads. It is obvious, [fols. 1030 & 1031] therefore, that the cost studies referred to do not in any way indicate the cost of handling single carlots, and that upon the basis of this cost there would be a reduction, if not a complete elimination, of even the small margin of $1.34 per car as mentioned in the report. There appears to be no support in the record for the finding that:

"Most of the Florida intrastate log traffic is in trainloads. The less-than-train-load movement is unimportant." On the contrary, there is a very substantial movement in single carlots and less than trainload quantities over the lines of the defendant, as well as other carriers in Florida.

3. The record shows, moreover, that when defendant's log rates were established these rates were strongly condemned by the Railroad Commission of Florida, upon the ground that they were unduly and unreasonably low; and further, that in the view of the Railroad Commission, as expressed at that time, "the rates carried in this tariff are such as might be deemed confiscatory."

For the foregoing reasons these intervenors protest against any finding that rates of the sort thus described are "reasonably compensatory," and respectfully urge that the findings in the proposed report in this respect should be eliminated.

Respectfully submitted,
Henry Thurtell, Charles J. Rixey, Attorneys for Interveners as of Record.

August 31, 1927.

[fol. 1032] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

Georgia Public Service Commission

EXCEPTIONS TO PROPOSED REPORT OF EXAMINER R. M. BROWN

1. The Georgia Public Service Commission, complainant in this case, represents all parties in Georgia having any interest in the movement of logs from Florida to points in Georgia, covered by this investigation.

2. It is alleged, and the record in this case shows, that the interstate rates on logs charged by the Atlantic Coast Line Railroad from points in Florida to points in Georgia are unreasonably high as compared with the rates charged by the Atlantic Coast Line Railroad for handling logs

intrastate between points in Florida, to the extent that the Georgia manufacturer is prevented from purchasing logs in Florida, the difference in the rates being too great for the Georgia man to absorb against his Florida competitor.

3. The complaint of the Georgia Public Service Commission is not an attack on any rates which have been fixed or required by the Railroad Commission of Florida. The rates being charged by the Atlantic Coast Line Railroad in Florida being voluntarily established by that line and its predecessors, and were condemned by the Florida Railroad Commission, but continued in force voluntarily by the Atlantic Coast Line Railroad.

[fol. 1033] 4. After this complaint was filed, the Georgia-Florida Sawmill Association, now Southeastern Forest Products Association, among other Florida interests, intervened, but the Georgia-Florida Sawmill Association failing to comply with the rules of your Commission by showing clearly its interest in the matter, the complainant, Georgia Public Service Commission, requested your Honorable Commission to have your rules complied with. Your Chief Examiner called on the Georgia-Florida Sawmill Association to comply with the rules, but this was never accomplished. Attention is directed to this for the reason that the name of this organization (Georgia-Florida Sawmill Association) would indicate that it represented Georgia shippers, and further to the fact that the Examiner, in referring in his report to evidence submitted by witness for the Georgia-Florida Sawmill Association, appears to be under the impression that the Georgia-Florida Sawmill Association represented Georgia shippers that were opposed to the complaint, which is not the fact, as no Georgia lumber manufacturer testified on behalf of the Georgia-Florida Sawmill Association in opposition to this complaint.

5. At sheet 7 of the Examiner's report, the Examiner states: "Complaintant's evidence was mainly in support of its allegations under Sections 3 and 13. It did not attempt to indicate what would constitute a reasonable interstate scale in and of itself. In this connection it was stated that complainant was not attempting to say what should be the measure of the interstate rates, but that if the

Florida rates were found just and reasonable they should be made to apply on log traffic between Florida and Georgia."

The Georgia Commission is not familiar with any rule of your Honorable Commission or any law that requires the complainant to suggest or say to your Commission what rates you should use to remove discriminations. While we know that such evidence is often submitted, and sometimes [fol. 1034] may be desirable, but in this case the Georgia Public Service Commission is asking that the Georgia shipper be placed on an equality with his competitor in Florida by being permitted, thru equal rates, to draw his raw materials from Florida, and certainly we do not feel that the Examiner is justified in recommending the dismissal of the complaint, for the reason that the complainant failed to suggest to him what rates he should recommend to your Honorable Commission.

6. Again at sheet 7, the Examiner makes reference to evidence submitted by the complainant of comparisons between the Florida rates and the interstate rates for the purpose of showing undue prejudice of log shippers located at Bainbridge, Albany, Thomasville, Quitman, Valdosta, and Waycross, Georgia, and undue preference of Florida shippers located at certain selected Florida points, and further states that the comparisons were designed to show merely the rate advantage of the Florida shipper over those located in Georgia. The conclusion of the Examiner in this respect is absolutely correct, and this was testified to by complainant's witness at the time the exhibit was submitted, but the Examiner also states: "No movement under the interstate rates was shown, and complainant admits that there is none." This last statement explains fully the very reason that this complaint was brought, as testimony of witness for the Georgia Public Service Commission, beginning at page 10 of the record, shows that already the State of Georgia has lost some manufacturing interests to the State of Florida, and other manufacturers located in Georgia on the border of Florida were then negotiating with the view of moving their industries to Florida, on account of this rate situation. Witness Giddens, located at Valdosta, Georgia (Page 374 to 423), and Witness Davies, of Climax, Georgia (Page 424 to 450),

and Witness Jackson and Simmons, all testified to the effect that they were not shipping any logs from Florida to Georgia, but had attempted to make purchases in Florida and were prevented from doing so on account of the unrea- [fol. 1035] sonably high rate interstate, as compared with the intrastate rates in Florida, making it possible for the Florida manufacturer to pay a higher price for these logs than the Georgia manufacturer could afford to pay and absorb the difference in freight rates. The law is very clear that when the disparity in rates is so great as to prevent the free movement of interstate commerce, that it works a discrimination and should be removed, and that is all the complainants are asking in this case.

The Examiner calls attention to the fact that there are sixty-four sawmills located on the Atlantic Coast Line in Georgia within 170 miles of Florida, "but few of the owners of these mills testified in support of the complaint," leaving the inference that he was not impressed with the evidence submitted by such Georgia shippers as did testify, and that of the Georgia Public Service Commission, who represented all Georgia shippers. In other words, he might have been impressed if the complainant had brought into the hearing each of the operators of these sixty-four mills. At sheet 8, referring to testimony of the Georgia shippers, the Examiner says: "Their testimony indicates that they are interested primarily in the reduction of the interstate rates rather than in the relationship between the Florida rates and the interstate rates. All but one admitted that an increase in the Florida rates would not benefit them, and that it would not be feasible to ship logs from Florida to Georgia under defendant's present interstate rates." We are unable to find in the record justification for the first part of this statement, for the reason that the purpose of the complaint is to bring about proper relationship between the inter and intrastate rates. However, the Examiner is correct, and the record so shows, that the present interstate rate is too high, and cannot be used, and this is *ad-* admitted by the defendant in submitting a schedule of rates as a compromise which is lower than the present interstate rates, and the rates submitted by the defendant have been recommended by the Examiner.

[fol. 1036] 8. At sheet 8, the Examiner makes reference to testimony of the Georgia shippers to the effect that they stated in general terms that there is available timber in Florida which could be economically purchased and transported over defendant's line to their mills in Georgia if reasonable interstate rates were published, but the location or quantity of such timber was not revealed. At the hearing at Valdosta, Witness Jackson, representing the Jackson Brothers Lumber Company, Valdosta, Georgia, testified (Page 60 to 70) that at the time of the hearing he was negotiating for a tract of 190,000,000 ft. of logs in Florida, but could not make the purchase under the existing rate adjustment. That is, he would be unable to pay the price for this timber and absorb the difference in the inter and intrastate rate that could be paid by the Florida manufacturer, the difference in the rate representing a reasonable profit. Witness Jackson, in his testimony, gave the exact location of this timber, but before the hearing at Jacksonville the timber had been purchased by Florida interests. It is not our purpose in making this statement to charge that any of the Florida interests parties to this case took advantage of this testimony to purchase this timber against Mr. Jackson, but the fact remains that Mr. Jackson lost the timber, and for this reason the Georgia witnesses testifying at the Jacksonville hearing declined to give the location or quantity, or any other information that would reveal the location of the timber which they desired to purchase. After the experience of Witness Jackson, the other Georgia manufacturers should not be criticized, or their testimony disregarded, for their failure to reveal the location of their proposed purchases.

9. At sheet 8, the Examiner says: "Most of the Florida intrastate log traffic is in train loads. The less than train load movement is unimportant." The Examiner has evidently overlooked the testimony of Witness Perrin, for the Atlantic Coast Line Railroad, at page 238, where he testified that there is a movement in single car lots, and that the movement of logs under this Florida intrastate [fol. 1037] scale is not confined to Jacksonville or Perry, or any other point. This, of course, is obvious for the reason that this Florida scale applies up to a distance of

170 miles between all points on the Atlantic Coast Line Railroad in Florida. There are many mills located on the Atlantic Coast Line Railroad in the peninsula or South Florida who have the benefit of this scale, and do not receive their logs in train lots. It is extremely doubtful if there is any movement of logs anywhere in Florida over the Atlantic Coast Line for distances more than 170 miles, in which event it must be conceded that the maximum revenue derived from log traffic by the Atlantic Coast Line in Florida is on this Florida intrastate scale. The less than train load movement is not unimportant, and certainly is just as important to the Georgia manufacturer who desires to purchase logs in Florida as it is to the Florida manufacturer who is to-day purchasing logs and receiving them in less than train load lots, and receiving the benefit of the Florida intrastate rate. The Examiner, at sheet 2, states: "While complainant states that the object of its complaint is to secure reasonable rates on logs from all points on defendant's railroad in Florida to all destinations on that line in Georgia, the record shows that in so far as the interstate rates are concerned relief is desired only with respect to rates on logs from points in that portion of Florida lying north of Jacksonville, Gainesville, Burnetts Lake, and High Springs, Florida," and at sheet 10, in dealing with the rates proposed by defendant, the Examiner states: "The complaint does not attack the South Florida rates. It is therefore unnecessary for the Commission to indicate its approval or disapproval of such rates at this time. The Examiner has evidently overlooked the testimony of witness for the Georgia Public Service Commission at page 35 of the record, where he stated that "the complaint of the Georgia Commission is not confined to any particular manufacturing point in Florida, but Jacksonville and Perry were only used to illustrate the conditions as they exist. The Florida intrastate rates involved in this case apply between [fol. 1038] any two points in Florida located on the Atlantic Coast Line Railroad for any distance up to 170 miles. Therefore, such points as Tampa, Lakeland, or any other manufacturing point in Florida on the Atlantic Coast Line can use these Florida rates for a distance of 170 miles," and we insist most emphatically that, in considering the complaint of the Georgia Public Service Commission

in this case, it is necessary for your Honorable Commission to give consideration to the intrastate rates in South Florida. As the record shows, this Florida scale only extends for a distance of 170 miles, and therefore it would not have been proper for the complainant to have prepared exhibits making comparisons for distances in excess of 170 miles. It so happens that in so far as Georgia is concerned, it would confine the territory to what the Examiner terms "North Florida." However, a glance at the distance table of the Atlantic Coast Line Railroad will show at once that the mills in North Florida may draw logs from South Florida for a distance of 170 miles, in fact, as previously stated, it is doubtful if there is any movement of logs between any points in Florida over the Atlantic Coast Line Railroad that do not receive the benefit of this Florida intrastate scale. The discrimination complained of here, as the record shows, is not confined to Jacksonville or any other point in Florida.

10. At sheet 10, the Examiner says: "Several rate exhibits were submitted by complainants for the purpose of showing that the proposed interstate rates are unreasonably high when compared with defendant's intrastate log rates in various of the Southeastern States; with the average of such intrastate rates, including the Alabama scale; and with the combined average of defendant's intrastate and interstate log rates applicable in the Southeast. Complainant's showing is not persuasive of the unreasonableness of the proposed rates. None of the intrastate rates were voluntarily established except those in Florida." As explained by the witness for the Georgia Public Service Commission, in submitting exhibits referred to here by the [fol. 1039] Examiner, it was with the purpose of giving to your honorable Commission a complete picture of the log rates operated by the Atlantic Coast Line Railroad, both inter and intrastate, but the exhibit, we regret, did not apparently impress the Examiner for the reason as he states: "None of the intrastate rates were voluntarily established except those in Florida." We hesitate to express the thought that the Examiner or your Honorable Commission does not look upon rates prescribed by State authorities in any instance as being just and reasonable rates, and should not be given consideration when submitted for the

purpose of comparison, as in case. The one exception noted by the Examiner of voluntarily established rates are the rates in Florida, which are the lowest rates shown on the exhibit, and in fact the lowest rates on logs we were able to locate being operated by the Atlantic Coast Line Railroad on any part of its line. The Examiner says: "Transportation conditions under the intrastate rates are not shown to be similar to those existing interstate between Florida and Georgia." We may also say that it was not shown that the transportation conditions under the intrastate rates were dissimilar to those existing interstate between Florida and Georgia, except as to some of the movement intrastate in Florida, but the record does show that Witness Perrin for the Atlantic Coast Line testified that the preponderance of the log movement on the Atlantic Coast Line Railroad was intrastate. This being true, then it would seem reasonable that the intrastate rates which move the preponderance of the traffic should be given most thorough consideration.

11. At sheet 11, in discussing evidence submitted by the Georgia Public Service Commision, the Examiner says: "The force of the comparisons is lessened by the incluison in the averages of the Florida-Georgia interstate rates, which defendant proposes to reduce, and by the conclusion of the Florida rates, which are shown to be on a low basis." This statement of the Examiner is not understood. [fol. 1040] Certainly, if the exhibit purported to include all scales of rates on logs operated by the Atlantic Coast Line Railroad, it would not have been complete if the Florida-Georgia interstate rates or the Florida rates had been excluded, and instead of the inclusion of these rates lessening the force of the comparisons, it may well be said that the force of the comparisons would have been lessened by the exclusion of any of the schedules, otherwise your Commission would not have had a complete picture of the log rate situation on defendant's lines.

12. At sheet 11, the Examiner makes reference to an order issued by the Georgia Public Service Commission in 1925 that was later rescinded, and states that: "Complainant's Rate Expert admitted that the higher rates thus prescribed, at that time, were on a reasonably low basis."

The Examiner had reference to the testimony of the witness for the Georgia Public Service Commission at page 39, as follows: "Q: And we are entitled to believe that based on that testimony, and their best information, the scale of rates which the Georgia Commission required the railroads to establish represented its best judgment as to reasonable rates? A: At the time, yes sir." We are unable to find in the record wherethe Rate Expert of the Georgia Commission testified that these Georgia rates which have been cancelled were on a "reasonably low basis." All rates prescribed by the Georgia Commission are maximum rates, and as testified to by the witness for the Georgia Commission, the order referred to by the Examiner was rescinded when this Florida situation was brought to the attention of the Georgia Commission, and there is nothing in this record to indicate that it is the opinion of the Georgia Commision that the rates which have been cancelled are at this time reasonable maximum rates.

13. Beginning at sheet 11, the Examiner discusses the evidence submitted for the Florida intervenors to the effect that any material increase in the Florida rates will either [fol. 1041] cause them to move their plants to the timber or abandon operations, and that in either event the defendant would lose considerable log traffic, the extent of which cannot be readily estimated, and expresses doubt that if the Florida rates were increased that it would compensate the Atlantic Coast Line for the loss of such traffic. The Georgia Public Service Commission submits that the people of Georgia should not be penalized in favor of manufacturers in Florida simply because there is a possibility of the Atlantic Coast Line losing some traffic under a proper rate adjustment. That is not the question involved in this proceeding, but the question is, what is a reasonable rate on logs between points in Florida, and between points in Florida and points in Georgia, and why should not the Georgia manufacturer be placed on an equality with his Florida competitor. It is unreasonable to say that the manufacturer in Georgia, if he chooses to purchase logs in Florida, should pay an unreasonable rate for the transportation of same in order that his competitor in Florida may enjoy a lower rate under the apprehension that any change

in the Florida rates would cause loss of business to the carrier. The complainant in this case is not insisting on any change in the Florida rate, but is insisting that the same rate that is made applicable intrastate in Florida also be required between Florida and Georgia.

14. At sheet 12, the Examiner, commenting upon evidence submitted by the Florida intervenors, makes reference to the tremendous cost to the Brooks-Scanlon Corporation to make its plant from Eastport, Florida, it being contended by this intervenor that any change in the present Florida rate will cause them to move their operations from Eastport back into the timber. The record shows that the cost of constructing the present mill properties was approximately $2,500,000, and as stated by the Examiner, it will cost between three and four million dollars to move the plant. In other words, it will cost them more to move the plant than to build new plants. We submit that whatever [fol. 1042] the cost may be, if any, has no bearing or relevancy to the reasonableness of the freight rate on logs between points in Florida, or interstate from Florida to Georgia. Should the Commission attempt to consider the cost of constructing a lumber mill as a factor in arriving at the reasonableness of a rate, it would have before it an unending task, for there is certainly no relationship between the cost of constructing a lumber mill and the cost to the carrier for transporting a car of freight. If such evidence is to be considered as relevant, then of course it follows that the greater the cost for constructing the mill the lower the rate, and therefore the ordinary mill man would have to pay the higher rate and be forced out of business, which as a matter of fact is what is taking place with the Georgia manufacturer vs. the Florida manufacturer, and the very cause of this complaint.

At sheet 12, the Examiner discusses further the testimony of the Florida interveners, making reference to their testimony to the effect that there is no Florida timber in commercial volume within 170 miles of Georgia which could be acquired by Georgia log shippers, as all of such timber is owned by Florida mills, and their contention that it will be impracticable to ship logs to Georgia under defendant's present interstate rates, or even under rates as low as those of the Cummer scale. The proposed findings of the Exam-

iner would indicate that he has accepted this testimony and disregarded entirely the testimony of Witnesses Giddens, Jackson, Davies, and Simmons, who are Georgia lumber manufacturers, and testified in the strongest terms they were in position and were anxious to purchase logs in Florida, were then negotiating for certain tracts of timber, but were unable to close these negotiations on account of the rate situation here complained of. The Georgia manufacturer frankly admits, and that is a part of this complaint, that it is impracticable to ship logs from Florida to Georgia under the present interstate rates, but these Georgia witnesses stated clearly that if they were accorded the rates now in effect in Florida they could and would ship logs from [fol. 1043] Florida to Georgia, and further that if the interstate rate and the Florida intrastate rate were made the same on anything like a reasonable level to permit them to compete with the Florida man in the purchase of these logs, they would be able to and would ship logs from Florida to Georgia. Should the Examiner be correct in his conclusion that there would probably be no movement from Florida to Georgia under the Cummer scale, and his further conclusion that the revenue received by the Atlantic Coast Line from its Florida intrastate log traffic is reasonably compensatory, then we are at a loss to understand why he failed to recommend that the Florida intrastate rate be extended for interstate application from Florida to Georgia. We submit that should this be done, and if there is no movement there would be no loss in revenue to the Atlantic Coast Line Railroad, and no violence would have been done to the interests of these Florida intervenors. However, on the other hand, if the testimony of the Georgia shipper is accepted at its face value, and we believe it should, the revenues of the Atlantic Coast Line Railroad would be increased for the reason there is not and cannot be any movement under the present rates.

16. At sheet 12, the Examiner makes reference to the outbound movement by water under relatively low rates. The outbound rates on lumber are not involved in this complaint in any way whatever, and we will therefore not discuss this feature.

17 At page 14, the Examiner says: Testimony for complainant is to the effect that under certain assumed conditions such discrimination or prejudice might result, but positive proof in this respect is lacking." Here, again, it is evident that the Examiner has failed to give serious consideration to the evidence and testimony submitter by the Georgia Public Service Commission, and by Georgia lumber manufacturers who testified in support of the complainant, [fol. 1044] the Georgia Public Service Commission. The rate exhibits submitted by the witness for the Georgia Public Service Commission were for the purpose of showing the handicap the Florida manufacturer had over the Georgia manufacturer, and this evidence was fully supported by the uncontradicted testimony of lumber manufacturers at Valdosta, and other places in Georgia, to the effect that it was impracticable for them to ship logs from Florida to Georgia under this handicap. We submit that the testimony of a manufacturer in Georgia, altho his output of timber may not amount to more than 100,000 feet per day, is entitled to just as much consideration as the testimony of a Florida manufacturer whose output is a million feet of timber per day, and that the smaller manufacturer is entitled to the same reasonable level of rates as the larger competitor. It is, of course, unfortunate that all of the lumber manufacturers are not in the larger class, but this should not bar them from consideration in a complaint of this character.

18. At sheet 13, the Examiner quotes in part the decision of the Supreme Court in Wisconsin Railroad Commission vs. C. B. & Q. Railroad Company, 257 U. S. 563, which was submitted by the Florida intervenors in justification of their contention that your Commission is without power to regulate intrastate commerce as such, unless such commerce constitutes a restraint or burden on interstate commerce, viz:

"It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of in-

trastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce."

[fol. 1045] We are thoroughly in accord with the above quotation, and direct particular attention to the wording "Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination abainst, and obstruction to, interstate commerce." If the disparity in the intrastate rates in Florida and the interstate rates from Florida to Georgia involved in this complaint is not substantial, then in our opinion there is no such thing as substantial disparity. Exhibit No. 1 of complaint shows that the interstate rates are in some instances as much as 200% higher than the Florida intrastate rates. The sworn testimony of Georgia manufacturers is that these rates are preventing them from shipping logs from Florida to Georgia, and certainly this can only be construed as an obstruction to interstate commerce.

19. At sheet 13, the Examiner quotes, in part, the decision of your Honorable Commission in Hunter Bros. Mercantile Co. vs. American Railway Express Co., 107 I. C. C. 313:

"Before we can require a change in the intrastate rate * * * it must appear that the intrastate rate injuriously affects interstate commerce in violation of the interstate commerce act. In some cases intrastate rates affect interstate commerce in ways so manifestly injurious as to make them subject to our control. In other cases the relation of an intrastate rate to movement of interstate commerce is so remote and insignificant that it may properly be disregarded. The decisive factor is whether or not the intrastate rate affects interstate commerce injuriously to a material extent."

The Georgia Commission is thoroughly in accord with the above statement quoted from your decision, but submit that the purport of this quotation does not apply to the instant case. We repeat again that the rate exhibits filed by

[fol. 1046] the Georgia Public Service Commission, and supported by the lumber manufacturers of Georgia by uncontradicted testimony, show clearly that the intrastate rate in Florida does affect interstate commerce injuriously to a material extent. If the effect of a rate is such as to cause manufacturers to leave one state and go to another, and is causing other manufacturers located on the borderline of the state heavy financial loss, as was proven in this case, then it must follow that it is injurious "to a material extent." Such is the overwhelming evidence in this case.

20. The rates proposed by the Examiner for interstate application from Florida to Georgia, and his recommendation that no findings be made against the Florida intrastate rates, does not relieve the complaint. The evidence in this record proves absolutely there should be no difference between the interstate rates from Florida to Georgia and the intrastate rates between points in Florida over the Atlantic Coast Line Railroad for a distance of 170 miles. Witnesses for the Georgia manufacturers testified that the rates proposed by the Atlantic Coast Line, which are also proposed by the Examiner, are entirely too high. The Examiner, at sheet 9, in discussing evidence submitted by the Atlantic Coast Line Railroad and the Florida Commission as to the probable cost of transportation, says: "Careful consideration of these studies, however, warrants the conclusion that the revenue received by defendant from its Florida intrastate log traffic, while relatively low, is reasonably compensatory. Under the circumstances a finding is not justified that the Florida rates are so low as to cast an undue burden on interstate commerce." We again insist there is a large movement of logs between points in Florida not covered by these approximate cost studies submitted by the Atlantic Coast Line and the Florida Commission, and no evidence has been submitted showing there is any difference in the transportation conditions in the movement of logs from Florida to Georgia, as compared with the intra-[fols. 1047 & 1048] state movement in Florida (except as to the Jacksonville situation).

Wherefore, complainant files the foregoing, setting out its various exceptions to the Examiner's Report as here-

inabove specified and complained of. Complainant especially calls attention to each of its exceptions wherein it is shown that the Examiner has misconceived complainants position, and has erred in summing up the evidence in the case; and has accordingly reached erroneous conclusions and made erroneous recommendations, such as are not supported by the evidence in the case.

Complainant most earnestly and respectfully urges that the manufacturers in Georgia be afforded the relief here prayed for, by requiring the same measure of rates on interstate traffic as on intrastate traffic between points in Florida.

Respectfully submitted,

By Jas. A. Perry, Chairman. E. M. Price, Rate Expert.

Atlanta, Georgia, August 31st, 1927. File 16197.

[fol. 1049] BEFORE INTERSTATE COMMERCE COMMISSION

REPLY OF THE FLORIDA RAILROAD COMMISSION TO EXCEPTIONS TO TENTATIVE REPORT OF EXAMINER R. M. BROWN.

The Florida Railroad Commission would not reply to the exceptions in this case if it were not for the fact that both in the exceptions filed by the Georgia Public Service Commission and in those filed by the intervening railroads in behalf of the defendant, a mis-statement has been made to the effect that the Florida Railroad Commission has condemned the log rates maintained by the Atlantic Coast Line Railroad for intrastate movement within Florida.

On page 2, of the exceptions filed by the Georgia Commission, the following is stated: "The rates being charged by the Atlantic Coast Line Railroad in Florida being voluntarily established by that line, and its predecessors, and [fol. 1050] were condemned by the Florida Railroad Commission." Also on page 7, of exceptions filed by the intervening railroads in behalf of the defendant, we find the following: "The record shows, moreover, that when defendant's log rates were established, these rates were

strongly condemned by the Railroad Commission of Florida, upon the ground that they were unduly and unreasonably low." And further, that in the view of the Railroad Commission, as expressed at that time, "The rates carried in this tariff are such as might be deemed confiscatory."

The Florida Commission does not wish to impugn the motives either of the Georgia Commission or the intervening carriers who filed exceptions in this case. But it is at a loss to understand how those parties can reiterate these statements which were made at the hearings, in face of the fact that the entire Florida Commission attended both the Valdosta hearing and the Jacksonville hearing, in a body, and speaking through its chairman emphatically denied that it had condemned these rates.

The Chairman went very fully into an explanation of the Florida Commission's position regarding the Cummer scale of log rates, applicable over the Atlantic Coast Line Railroad. Quoting from Chairman Wells' testimony at page 658—"When this case was first brought by the Georgia Public Service Commission, the Florida Commission, of course, was very much chagrined at the fact that a sister State would bring a case against a Florida rate or a sister State rate, and it was not the purpose of the Commis- [fol. 1051] sion to take any part in the proceedings or offer any testimony, although we put in an appearance at Valdosta. But when the Coast Line put into evidence a letter that was written in 1914, by our Rate Expert, and one also from the Chairman of the Commission, the Commission then thought it was up to them to make an investigation, which they have done." Quoting again from Chairman Wells' statement on page 669 of the record: "When that letter was written, they had not gone into the cost study; they were only assuming I presume, that it would not be compensatory, because just not long before that they had adopted what is known as Class 'P' rates, and logs were being hauled under this class. This particular Cummer rate was quite a good deal lower than Class 'P' rates. Therefore, without going into the matter or making a cost study themselves, they felt that it would not be remunerative, and thought that other traffic would have to bear a part of the burden." Quoting further from his statement on page 670 of the record, and referring to the letter written concerning

these log rates, he said: "Now that has been in operation since 1914 up until the present time, and the Atlantic Coast Line Railroad, I say, I know, for the last six years, have not applied to the Railroad Commission for a change in the Cummer log rate scale. Therefore, the Commission feels after this investigation which they will put their witness on the stand concerning, the way that it is handled in Florida, that it is remunerative to them."

[fol. 1052] Quoting from the brief filed by the Florida Railroad Commission in this case, and referring to the statement of Chairman Wells, that Commission says: "As will be noted from the statement of the Chairman, it is not the purpose of the Florida Railroad Commission that the Cummer scale of log rates is proper or desirable, as a measure of the interstate log rates between Florida and Georgia. But this Commission does, unqualifiedly, take the position that these rates, as applied in Florida, and over which it has jurisdiction, have its full approval."

The foregoing references to the position of the Florida Railroad Commission and to the opinion of the Florida Railroad Commission concerning the reasonableness and remunerativeness of the Cummer scale of log rates would seem sufficient to refute the statements made in the exceptions filed by the Georgia Commission and railroad interveners in behalf of the defendant that the Florida Commission had condemned them.

This Commission wishes to say again to the Honorable Interstate Commerce Commission that its position at this time is the same as it was at the time of the hearings in this case, concerning the Cummer scale of log rates, as now applied over the Atlantic Coast Line Railroad in Florida. We respectfully refer to the cost study made by our expert accountant, Mr. Pettijohn, pages 670 to 703, of the record, and pages 8 to 22, of the brief, filed by this Commission. This cost study, we think, fully and fairly establishes the fact that the rate under the Cummer scale and under the circumstances of its application, to practically only train-[fol. 1053] load movements, is without question reasonably compensatory.

This Commission notes with interest the argument made by interveners for the railroad interveners beginning at

page 4, and ending at page 7, of their exceptions. The following finding of the Examiner is what they object to:

"Careful consideration of these studies, however, warrants the conclusion that the revenue received by defendant from its Florida intrastate log traffic, while relatively low, is reasonably compensatory. Under the circumstances, a finding is not justified that the Florida rates are so low as to cast an undue burden on interstate commerce." (Sheet 9 of Examiner's report.)

We wish to call the attention of the Commission to the fact that the Atlantic Coast Line Railroad is the sole defendant in this case; that it is the only carrier who even attempted to furnish the Commission with the actual cost of service under the Cummer scale in Florida. The Atlantic Coast Line Railroad, we believe, would be the only carrier who could determine the actual cost of this service since it is not presumed by this Commission that the Seaboard Air Line and other intervening carriers have free access to the records of the Atlantic Coast Line. The Atlantic Coast Line has not excepted to this finding of the examiner, and it is significant that these interveners should question the correctness of this finding which only the Atlantic Coast Line could disprove.

[fol. 1054] The intervening carriers say at page 4, of their exceptions, that this proposed finding of the examiner is unsustained by the evidence. We submit that this is an inaccurate statement and rather a presumptuous one, in view of the facts as above stated.

The carrier intereveners very evidently overlook the fact that the Cummer scale of log rates is not under review in this proceeding, except insofar as it is alleged to discriminate against interstate commerce and to cast a burden on other traffic. The higher rates than the Cummer scale, found by the Examiner to be proper for interstate application, are exactly the interstate scale proposed by the carriers, and while it is believed by this commission that no traffic could move under it, and that no traffic would move under the Cummer scale from points in Florida to points in Georgia, it sees no objection to the publication of the carrier's proposed scale of rates even if they are mere paper rates.

The carrier interveners further on page 6, of their exceptions, compare the rates on logs under the Cummer scale and the rates on heavy commodities such as brick, sand, gravel and lime, and evidently wish to impress the thought that the movement of these commodities is the same as the log movement. These carriers do not demonstrate or seriously suggest that brick and such commodities are hauled with the same equipment and in the same quantities and every working day in the year, as are these log movements.

In conclusion, we respectfully submit to your Commission that the proposed report of the examiner in this case [fols. 1055 & 1056] is eminently fair and just, and that none of the exceptions filed seriously questions a single statement of fact or conclusion of law made by him in this report. We believe that it will stand every reasonable test.

Respectfully submitted.

A. S. Wells, Chairman. E. S. Matthews, Commissioner. Mamie G. Eaton, Commissioner. Theo. T. Turnbull, Counsel.

[Title omitted.]

[fol. 1057] Before Interstate Commerce Commission

Reply to Exceptions to Tentative Report

As late as May 31, 1927, the Supreme Court of the United States said:

Railroads are subject to regulations by both the State and the United States. The delimitation of the respective powers of the two governments requires often nice adjustments. The Federal power is paramount. But public interest demands that whenever possible conflict between the two authorities and irritation be avoided. To this end it is important that the Federal power be not exerted unnecessarily, hastily or harshly.

[fol. 1058] Lawrence vs. St. L. S. F. R. Co. (71 Law Rep. 791, 793).

The doctrine of law enunciated in those terms by the Supreme Court of the United States is clearly applicable to the present case and the Examiner in substance so finds. Having critically considered all the evidence, Examiner Brown in his proposed report declares that there is no warrant for finding any undue prejudice of Georgia interstate shippers or that the Florida rates are on such a level as to result in any real discrimination against, or obstruction to interstate commerce.

The complainant in the case having presented testimony to the effect that under certain assumed conditions such discrimination or prejudice might result (although positive proof in that respect was lacking) the Examiner further declares:

"A finding of unlawful discrimination or undue prejudice cannot be predicated on a mere assumption or assertion of their existence."

Indeed, Examiner Brown in effect concludes that any disturbance of the Florida rates would be harsh and is unnecessary. Emphasizing what would otherwise be the grave consequences in the way of enormous financial losses and the disturbance of social and economic conditions which prevail in several important Florida communities the presiding Examiner quite apparent had no difficulty in concluding that the complainant had singularly failed to make [fol. 1059] out any sort of case which would justify or entitle exertion of federal power as to the Florida rates.

The defendant in the case (Atlantic Coast Line Railroad Company) has impliedly accepted such report as properly stating the evidence and correctly applying the necessary conclusions of law.

Certain railroads (which were allowed to intervene apparently as defendants) have lodged a document which is described as "exceptions to Examiner's proposed report." It is in behalf of the Seaboard, Central of Georgia, Southern and G. S. & F. Railways. Of course the complaint in the case does not in any way concern rates of those carries, and, at the most, their possible interest in the outcome was only contingent and collateral.

Exceptions also have been filed by the Georgia Public Service Commission, complainant in the case.

No exceptions have been filed by the other intervening complainants who made themselves parties to the proceeding.

For convnience this reply will deal first with the so-called "exceptions" lodged by the Seaboard Air Line and certain other intervening railroads.

[fol. 1060] I

Reply to exceptions of the Seaboard Air Line et al.

Apparently the railroads which filed these exceptions are in a quite anomalous position. Having sought and obtained leave to intervene in behalf of "defendant" they, nevertheless, now quite clearly want to occupy an entirely different position. Their real effort is to assist the complainant in removing a supposed obstacle to the increase of rates on logs between points in Georgia up to the so-called "Alabama scale." At the most their particular interest in the proceedings extends no farther than that, and a general interest which they might have in any case before this Commission involving rates on logs. Their contribution to the proceedings is entirely gratuitous.

At any rate, although having taken their position in the case, it is difficult to see anything in the proposed report of which they may complain. Certainly the railroads here being considered cannot (and they did not) complain that the Examiner erred in recommending a finding that the so-called "Alabama scale" would be just and reasonable for interstate application. That is what those intervening railroads wanted.

As to the finding of the Examiner that no case under Sections 3 and 13 of the Act was made by the complainant [fol. 1061] it would ordinarily be supposed that these railroads would have no different or greater interest in the mat ter than the only read defenrant involved, i. e., the Atlantic Coast Line. If these carriers really are intervening defendants then they are in no position to complain that as to the allegations under Sections 3 and 13 of the Act the Examiner has recommended dismissal of the case.

As a matter of fact, it is not entirely plain that these railroads do actually except to such conclusions of the Exam-

iner. Apparently their real grievance concerns the following:

Careful consideration of these (cost) studies, however, warrants the conclusion that the revenue received by defendant from its Florida intrastate log traffic, while relatively low, is reasonably compensatory.

The railroad intervenors seem to fear that such a finding "would be seriously prejudicial to the interests of these interveners, as well as other carriers that are engaged in the transportation of logs in the territory here involved." In what way such finding would be seriously prejudicial to the interest of these carriers and others is altogether obscure. It is not proposed by the Examiner that the Florida log rates be ordered for application to any movements other than those to which they now apply. Taken in connection with the other findings that the "Alabama scale" [fol. 1062] would be appropriate for interstate application these intervening railroads cannot be warranted in any apprehensions which they profess to have with regard to the ultimate interpretation which might be placed upon a final decision like the one proposed by Examiner Brown.

It is to be borne in mind that the finding of Examiner Brown referred to goes no farther than that under the evidence the "Florida rates are not so low as to cast an undue burden on interstate commerce." There was no endeavor on the part of the Examiner to make a finding any broader than that. Without determining whether the measure of compensation received by the Atlantic Coast Line out of the Florida traffic is as fully remunerative as contended by the Florida Railroad Commission and the Florida shippers Examiner Brown went only so far as the law of the case actually required. It was only necessary to determine whether such Florida rates of the Atlantic Coast Line yield compensation reasonably sufficient to avoid the casting of an undue burden on interstate commerce. And of course under the evidence such finding was and had to be made.

There are no issues before this Commission calling for the fixation of minimum reasonable rates on Florida intrastate traffic. No such issue was tendered in the complaint and most certainly the complainant made no effort to set up such a case in its evidence. Whether a case of such sort

[fol. 1063] could lowfully be entertained by this Commission (independently of any question arising under Sections 3 and 13 of the Act) is doubtful, to say the least.

Apparently the whole point of confusion in the position of these intervening railroads arises from their failure to understand that with respect to the log rates of the Atlantic Coast Line in Florida the only appropriate findings are those which are pertinent to the precise and narrow issues in the case. This is not a general investigation; nor, indeed, does the case involve any considerable portion of the State of Florida. Therefore there can be no warrant for the intervening railroads or any other persons attributing to any findings in this case such general significance as would influence the measure of other log rates than those immediately involved. Indeed, if there be contained in the proposed report any such findings they are altogether in favor of the intervening railroads, because, certainly, approval of the measure of the "Alabama scale" for interstate application is of very much more general significance than anything else contained in the case.

Moreover, these intervening railroads are "shooting wild" when they assert (without any citation of authority in the record) that "there is a very substantial movement in single car lots and less than trainload quantities over the lines of the defendant." The rules of practice require that in excepting to any findings of fact by an Examiner [fol. 1064] there shall be furnished references to those parts of the record which are deemed to controvert, and to demonstrate the error of, the Examiner's conclusions.

In this instance, however, the intervening railroads simply make the bold assertion that the Examiner erred in his finding as to the unimportance of the less than trainload movements of the Atlantic Coast Line in Florida, and that the movement within the part of Florida here involved is nearly all solid trainloads daily. They do not question that as applied to the trainload movements the cost calculations clearly sustain the findings of Examiner Brown. Rather do they seek to cast doubt upon such findings by exaggerating the extent of movements in less than train load quantities. The apparent inability to cite any supporting evidence sufficiently disposes of such effort.

II

Exceptions of the Georgia Public Service Commission

The complainant in the case has not fined any exceptions in the form prescribed by the rules of practice. Rather does the document described as "exceptions" consist alone of a series of argumentative assertions which scarcely go to the real questions involved under the law, and which in any event are almost completely lacking authority either [fol. 1065] by citations to the record or controlling adjudications.

In considering the so-called "exceptions" of complainant it is important to observe in each instance the rather precise choice of language which the complainant uses. That is said because in most instances of apparent exception there is a complete omission to assert either that the findings are without evidence or that they are without the legal force which the Examiner attributes to them.

For instance, Examiner Brown makes the controlling finding that all but one of the mill men who testified for the complainant declared they would not be aided in any way in the making of interstate shipments merely by an advance in the Florida rates. And such was also the unanimous testimony of all the mill men who testified for the intervening shipper defendants.

If such finding of the Examiner is correct then of course it disposes of the whole case, under Sections 3 and 13. The complainant either must or ought to know that such is the legal situation; and yet without contradicting such finding of the Examiner and without citing any evidence to the contrary of what the Examiner declared, complainant nevertheless excepts to such finding on the ground that the purpose of the complaint is to bring about proper relationship between the inter and intrastate rates (Georgia Exceptions page 5).

[fol. 1066] That is typical of what is meant by what is said above regarding the style of language used by the complainant in its exceptions. Having excepted to such findings of the Examiner as to the testimony of complainant's own witnesses, it might be supposed that the basis of an exception would be either that such finding is not based on the

evidence or if supported by the evidence has no controlling effect in law.

But complainant does neither: while exception is taken to the controlling finding of the Examiner in the respect here being discussed the complainant has based such exception upon a mere statement of its own concerning the "purpose of the complainant.

There can be little doubt as to what was the purpose of the complainant. But if such purpose was frustrated by a complete failure of proof from complainant and the Examiner has correctly found the facts from the whole record and applied the law thereto, it makes no difference what was the purpose of complainant in bringing the case.

Of like character is the apparent attempt on page 4 to make an exception to something declared by the Examiner on sheet 7 of his report. But when analyzed it rather seems as if the complainant in such section of the document is agreeing with the Examiner as to the absence of any movement of logs from Florida to Georgia.

[fol. 1067] Immediately thereafter however, the complainant undertakes to explain away such significant fact by almost saying that such movement is prevented by the freight rate adjustment. If such a conclusion of fact were proper to be drawn from the evidence it would, of course, have a bearing on the case.

But although appearing as if making ready to advance such contention the complainant (near the bottom of Page 4 of its exceptions) shifts its ground quickly and says that witnesses for the complainant testified they had "attempted to make purchases in Florida and were prevented from doing so on account of the unreasonably high rate interstate, as compared with the intrastate rates in Florida, making it possible for the Florida manufacturer to pay a higher price for these logs than the Georgia manufacturer could afford to pay and absorb the difference in freight rates."

Thus again with respect to a controlling matter of fact the complainant fails to support any proper exception to the Examiner's conclusions that there is not now any movement of interstate commerce in logs over the Coast line from Florida to Georgia, that there is no likelihood of such movements occurring, and that in any event an ad-

vance in the Florida rates would not bring such interstate movements into existence. Apparently excepting to such conclusions of the Examiner the complainant, nevertheless, in its exceptions claims no more than that witnesses for the [fol. 1068] complainant testified they had been prevented from making purchases in Florida on account of the unreasonable high rate interstate, as compared with the intrastate rates in Florida. That, of course, sustains rather than controverts the conclusions of the Examiner. It is the high interstate rate of which complaint was made by the few Georgia shippers who took any interest in the proceedings and not the mere relationship between the inter and intrastate charges. And of course the real interest of those Georgia manufacturers is to prevent an increase in the Georgia intrastate rates.

On page 6 of its exceptions the complainant again seeks to justify its position with respect to the failure of its witnesses to describe the location and other characteristics of any commercial supplies of timbers in Florida available to them for purchase. Such attempted justification is confined to a reiteration of the circumstance that just at the time of the Valdosta hearing the Eppinger and Russell Tract was sold to parties who had no connection with this case and who began immediate construction of mills in the timbers.

But that seems a very insufficient explanation of the attitude of those witnesses for complainant, who were so obviously brought into the case by the Georgia Public Service Commission after securing the right to reopen the record as made at Valdosta.

While the matter has no bearing upon the complaint with [fol. 1069] respect to alleged violation of Section No. 3 nevertheless, the Georgia Commission excepts to the finding of Examiner Brown that the Florida movement in less than trainload quantities is unimportant. In that connection the complainant for the first time, and in evident desperation, seeks to shift its position with respect to the territory in Florida embraced within the complaint. In such exception as well as the other apparent intended on Page 7, the effort is made to include within the scope of this case the so-called South Florida territory.

But it certainly comes too late now to start over again in this case and try out the question of freight rates between

points in South Florida as compared with rates from North Florida to Georgia. Not remotely was any such question dealt with on the record. While witness Price, beginning with page 35 of the record, testified that the so-called "Cummer scale" applied all over the Atlantic Coast Line in Florida for hauls up to 170 miles, there was not made by the complainant the remotest effort to establish any case under the Interstate Commerce Act except from and within the territory described as North Florida.

Beginning at the bottom of page 10 of its exceptions the complainant undertakes to dissipate the force of a finding by the Examiner that the Atlantic Coast Line Railroad would lose considerable log traffic if there were any material increase in its Florida log rates. The complainant does [fol. 1070] not seem to except to that finding on any such ground as that the record fails to support it. Instead the complainant wanders off into a discussion of the alleged inequity of allowing a discrimination to exist against a manufacturer in Georgia in order that the Florida log traffic of the Coast Line may not be reduced.

Clearly, however, on that point the Examiner was dealing only with the question whether the Florida rates cast an undue burden on interstate commerce as a whole, such question being entirely separate and apart from any question of alleged undue prejudice under Section 3. In considering only the question whether the entire operations of the Coast Line are burdened by its Florida log rates it was entirely proper for the Examiner to point out that under the undisputed evidence the Coast Line would lose as a whole and not gain by an increase in its Florida rates here being discussed. But the Examiner did not remotely suggest that an actual, hurtful prejudice against Georgia shippers in interstate commerce should be justified merely in order that the Coast Line might retain its Florida log traffic. The purported exception of complainant respecting the above matter is entirely without merit and is based upon a clear misconception of the finding.

Again on page 11 of its "exceptions" complainant has misconstrued the proposed report of the Examiner. In such exception it is made to appear as if the construction of a new plant at this time by the Brooks-Scanlon Corporation [fol. 1071] would cost it only $2,500,000.00, while the cost of

moving such plant to the timbers would be between $3,000,000.00 and $4,000,000.00. But the complainant is straining somewhat in an effort to make an exception of that kind. Plainly the cost of moving the plant includes numerous items of loss and expense other than mere construction; and in addition the figure of original construction many years ago would not at all hold good today in view of the much higher plane of prevailing labor and other construction costs.

In that same exception the complainant then proceeds further to argue that there is no relationship between the reasonableness of freight rates and the cost of constructing lumber mills. It is made to appear as if the Examiner held to the contrary and therefore committed an error.

But that is not the situation at all. In determining whether under the evidence there is need for intervention of federal power to set aside and change State rates, the Supreme Court of the United States has repeatedly emphasized that such activity by federal authorities should not be indulged "harshly and unnecessarily." The Examiner therefore comprehensively analyzed and set forth the substance of the evidence as to what would be the harsh and hurtful consequences of any increase in the Florida log rates of the defendant, Atlantic Coast Line Railroad.

In setting forth what those consequences would be the [fol. 1072] Examiner is fully supported by the requirements of law in such situations. The lack of necessity for interfering with the State rates is made apparent from the testimony from complainant's own witnesses. The harsh consequences which would ensue from such interference are clearly portrayed by the intervening shipper defendants and are forcibly stated by the Examiner. To attempt to put the Examiner in the ridiculous position of having sought to measure the reasonableness of any rates by the cost of mill construction in Florida is only to be considered as indicating the inability of complainant to point out any real error contained in the proposed report.

On page 12 of the so-called "exceptions" of complainant, some sort of argument is attempted to be made with respect to the findings of the Examiner as to the availability of supplies of commercial timber in Florida and the possibility of

shipping logs therefrom into Georgia. It is difficult to determine just what is the intended basis of such exceptions. In one place it seems to be argued that the Examiner committed error in accepting the testimony of intervening shipper defendants and disregarding "entirely" the testimony of certain Georgia mill men introduced by the complainant.

But there is nothing in the tentative report which would suggest an acceptance of the testimony of any group of witnesses and a complete disregard of the testimony of any others. On the contrary it seems quite evident the Exam- [fol. 1073] iner has in large measure been influenced in all his conclusions by the testimony of complainant's witnesses as corroborated in many respects by the testimony of a number of competent witnesses for the Florida interests. In attempting to make an exception of the sort here referred to and failing altogether to point out by references to the record any testimony which the Examiner disregarded, or which he misunderstood, or which he has misstated, the complainant stands in the position of merely recording its view that the Examiner decided the case wrongly, but on what grounds it does not precisely state.

At the bottom of page 13 of the "Exceptions" the complainant again asserts that the Examiner has failed to give serious consideration to the evidence of the complainant which was submitted "for the purpose of showing the handicap the Florida manufacturer had over the Georgia manufacturer." Then the further point is made that the testimony of a small manufacturer in Georgia is entitled to as much consideration as the testimony of a large manufacturer in Florida.

Just what the complainant is thus driving at in such exception is difficult to understand. The Examiner in his report summarized the whole case as follows:

Testimony for complaiant is to the effect that under certain assumed conditions such discrimination or prejudice might result, but positive proof in this respect is lacking.

[fol. 1074] That is the essence of the whole case and in excepting to such conclusion it might be supposed the complainant would specifically set forth or refer to the evidence upon which it relies to support a contrary conclusion. But

instead of doing so, exception to that important finding is based upon the contention that the testimony of a small Georgia lumber man is entitled to as much consideration as the testimony of a large Florida mill man, and that all the witnesses for the complainant testified to the "handicap the Florida manufacturer had over the Georgia manufacturer." Whatever that means it is not apparent to these intervenors.

On page 14 of the "exceptions" the complainant again wanders off on a tangent. It seems to be assumed that the only part of the decision of the Supreme Court in the Wisconsin Rate Case important enough to be considered is the holding that action of this Commission "should be directed to substantial disparity." The complainant seems to suppose that if there be a mere disparity of rate substantial in amount then a case has been made.

But that is the fundamental misconception of the complainant which has controlled it from the beginning. Not only must the disparity in rates be subtantial, but the Supreme Court further says that it must operate "as a real discrimination against and obstruction to interstate commerce."

[fol. 1075] The complainant ignores that portion of the decision of the Supreme Court and has proceeded from the beginning of this case on the mistaken assumption that nothing more need be shown than a mere disparity of rates substantial in amount. The further requirement that such disparity may not be dealt with by this Commission unless it operates in fact to restrain and cast a burden upon interstate commerce seems not to have been understood by complainant because neither in its evidence, in its original brief, nor in its exceptions, has the complainant appeared seriously to have sought to make out a case of such kind.

And lastly on page 16 of its "exceptions" the complainant quotes that part of the proposed report in which the Examiner declares that the revenue received by the Atlantic Coast Line out of its Florida log traffic is sufficiently compensatory to negative any contention that such rates are so low as to cast an undue burden on interstate commerce.

But although excepting to such conclusions the complainant grounds its exceptions upon its own insistence that "there is a large movement of logs between points in Flor-

ida not covered by" the cost calculations. Presumably the complainant has reference to movements over other railroads and possibly to some movements over the Coast Line outside the territory involved in this proceeding.

Certainly the language which complainant uses is not the equivalent of a direct challenge to the correctness of what the Examiner actually said.

[fol. 1076] Conclusion

It has not been attempted herein to take notice of various critical comments of the complainant concerning the report of Examiner Brown. Indeed, it has been difficult to make reply to the so-called "exceptions" because for the most part the complainant first indicated dissatisfaction with certain findings, and then, instead of supporting its position by citations to the record or to adjudicated cases, the complainant usually wanders off into a discussion of some matter other than the particular thing excepted to.

Upon the whole this conclusion must necessarily be gathered from all the proceedings; the complainant started off with an idea that an obstacle to the increasing of rates on logs within Georgia presented itself by the lower rates over the Coast Line within Florida; that in order to remove such obstacle it would suffice to bring complaint to this Commission directing attention to the difference between such Florida rates and the published interstate rates from Florida to Georgia; and that a mere exhibition of such substantial differences would constitute a "Shreveport case." When the intervening shipper defendants at the close of the Valdosta hearing so clearly indicated their view that the complainant had utterly failed even remotely to present evidence of the kind which would be essential to make out such a case, the complainant thereafter succeeded in obtaining [fol. 1077] leave to submit further evidence in its behalf in Jacksonville. Then at the Jacksonville hearing all but one of its own witnesses testified that an increase in the Florida rates would not enable shipments to be made in interstate commerce from Florida to Georgia and that the only remedy which might conceivably be of help to them would be the reduction of the interstate rates to the level of those prevailing in Florida. On the point whether even in such event the Georgia interests would be able to procure timber

in Florida, those witnesses were exceedingly vague and took refuge finally in the refusal to testify to the location or of the characteristics of such supplies as they thought might be available to them.

The intervening shipper defendants then demonstrated completely the absence of such timber supplies, the commercial impossibility of shipping logs from Florida to interior Georgia even if such supplies existed, and to the tremendous losses which the Florida interests would suffer, including the Atlantic Coast Line Railroad, should there be any change in the Florida rates.

The Examiner has found that the complainant failed to submit evidence sufficient to make out a case under the Constitution and laws of Congress in so far as concerns the matter of Florida rates. In support of such conclusion the Examiner has accurately stated the law and carefully presented the essential facts contained in the record, considering the evidence of all parties.

[fol. 1078] The complainant now appears to except to such proposed report; but when such exceptions are read with care it is bound to be concluded that even yet the complainant does not seem to understand what, under the law, would have to be proven in order to accomplish what they set out to do.

At the most, the chief complaint in the exceptions is an insinuation that the Examiner was controlled more by the testimony of large lumber interests in Florida than by small lumber interests in Georgia, and in effect the document winds up with a characteristic, time-honored plea that the little man should be protected against the big one.

[fol. 1079] This Commission will not be swayed in its conclusions by the resort of complainant to that method of appeal.

Respectfully submitted.

Brooks-Scanlon Corporation, by Edward P. Sanborn, Geo. L. Rutherford, Attorneys. Putnam Lumber Company, by H. P. Adair, Attorney. Wilson Cypress Company, by H. P. Osborne, Attorney. Cummer Lumber Company, Cummer Cypress Company, by E. W. Mitchell, Attorney. Chas. E. Cotterill, of Counsel.

Dated October 1, 1927, Jacksonville, Florida.

[fol. 1080] BEFORE INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Submitted December 16, 1927. Decided August 2, 1928

1. Interstate rates on logs, except walnut, cherry, and cedar, in carloads, from Florida points north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, Fla., to destinations in Georgia found unreasonable. Reasonable rates prescribed.
2. Florida intrastate rates on logs, except cedar, in carloads, found to be unduly preferential of shippers in intrastate commerce, unduly prejudicial to shippers in intrastate commerce, and unjustly discriminatory against interstate commerce. Rates prescribed which will remove such preference, prejudice, and discrimination.

James A. Perry, W. R. McDonald, O. R. Bennett, Albert J. Woodruff, and E. M. Price for complainant.

J. M. Simmons for Elberta Crate Company, intervener, and Champion Box Company; J. C. Jackson and H. A. Jackson for Jackson Brothers Lumber Company; J. E. Davies for himself; and C. C. Giddens for J. N. Bray & Company.

Carl H. Davis, Robert C. Alston, and W. E. Kay for defendant.

Frank W. Gwathmey and Henry Thurtell for Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company, and Georgia Southern & Florida Railway Company; and J. A. Streyer for American Short Line Railroad Association, interveners.

A. S. Wells, E. S. Matthews, Mamie G. Eaton, R. Hudson Burr, Fred H. Davis, J. H. Tench, and Fred Pettijohn for Florida Railroad Commission.

T. J. McGinn for Board of Trade and city of Savannah.

Charles E. Cotterill for Cummer Cypress Company, Wil-

son Cypress Company, and Putnam Lumber Company; Edward P. Sanborn and George L. Rutherford for Brooks-Scanlon Corporation; H. P. Adair for Putnam Lumber Company, H. P. Osborne for Wilson Cypress Company; E. W. Mitchell for Cummer Cypress Company; J. S. Farish for Southeastern Forest Products Association; J. O. Cassidy and E. C. Green for Jacksonville Traffic Bureau; R. E. Mich for Southern Cypress Manufacturers' Association; and A. G. T. Moore for Southern Pine Association, interveners.

[fol. 1081] By the Commission

Division 4, Commissioners Meyer, Eastman, and Woodlock

By Division 4:

Exceptions were filed by complainant and by interveners Seaboard Air Line, Central of Georgia, Southern, and Georgia Southern & Florida to the report proposed by the examiner, to which the Florida Railroad Commission and interveners Jacksonville Traffic Bureau, Southeastern Forest Products Association, Brooks-Scanlon Corporation, Putnam Lumber Company, Wilson Cypress Company, and Cummer Cypress Company replied. The case has been orally argued. Our conclusions differ from those recommended by the examiner.

By complaint filed May 3, 1926, complainant alleges on behalf of Georgia log shippers that the rates on logs in carloads from points in Florida on defendant's lines to destinations in Georgia on defendant's lines are unjust and unreasonable and, as compared with the rates applicable intrastate within Florida, unjustly discriminatory and unduly prejudicial, and that defendant's Florida intrastate rates are unduly preferential of intrastate shippers in Florida, unduly prejudicial to interstate shippers from Florida to Georgia, and unjustly discriminatory against interstate commerce. Reasonable, nonprejudicial, and nondiscriminatory rates for the future are sought.

The Florida Railroad Commission filed no formal petition of intervention but appeared in defense of the Florida intrastate rates. The Elberta Crate Company of Bainbridge, Ga., intervened in support of the complaint. The Seaboard Air Line, Central of Georgia, Southern, Georgia Southern & Florida, and the American Short Line Rail-

road Association intervened in opposition to the continuance of the present Florida intrastate rates and to the extension of such rates interstate to Georgia. The Jacksonville Traffic Bureau, Brooks-Scanlon Corporation, Putnam Lumber Company, Wilson Cypress Company, and Cummer Cypress Company, hereinafter referred to as the Florida interveners, intervened in support of the Florida rates. The Georgia-Florida Sawmill Association, now the Southeastern Forest Products Association, the Southern Pine Association, and the Southern Cypress Manufacturers' Association also intervened in opposition to the complaint.

At the hearing the Florida Railroad Commission and the Florida interveners moved that the complaint be dismissed on the grounds that evidence sufficient to constitute a cause of action within the power of this commission to remedy had not been submitted and that the allegations of the complaint had not been sustained. The evidence justifies consideration of the case on its merits and the motion is denied. [fol. 1082] While complainant assails the rates from all points on defendant's lines in Florida to all points on its lines in Georgia, the record shows that in so far as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry, and cedar, from that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, hereinafter referred to as north Florida, to destinations in Georgia for distances not exceeding 170 miles.

The interstate rates from north Florida to Georgia are published in cents per 100 pounds, minimum 40,000 pounds, and apply between north Florida and points south of Charleston, S. C. They became effective August 15, 1925, as a part of a general revision of defendant's log rates. From points south of Jacksonville, Gainesville, Burnett's Lake, and High Springs higher interstate rates apply. The Florida intrastate rates assailed are published in amounts per car, minimum 50,000 pounds, excess in proportion, and apply on logs, except cedar, for 170 miles and under. There follows a brief history of the latter rates.

On June 29, 1903, a contract was entered into between the Jacksonville & Southwestern Railroad and the Cummer Lumber Company, controlled by the same interests, under which the former agreed to transport logs for the latter at certain specified rates for a period of 15 years. The Jack-

sonville & Southwestern extended from Jacksonville southwesterly to Newberry, Fla., approximately 85 miles. The mills of the Cummer Lumber Company were at Mil-dale, near Jacksonville. Under this contract the rates per car of 50,000 pounds were $4 for distances under 40 miles, $7 for distances from 40 to 60 miles, and $8 for distances from 60 to 90 miles, with $1 per car additional for each 10 miles over 90, the rate from the Suwanee River not to exceed $10 per car. These rates are generally referred to as the Cummer scale. Defendant acquired the properties of the Jacksonville & Southwestern in 1904 and had to assume the obligations of that company under the contract referred to. Upon its expiration in 1918 the contract was not renewed. In the meantime, on January 26, 1914, defendant entered into a similar contract with the Carpenter-O'Brien Company, the predecessor of intervener Brooks-Scanlon Corporation, which was to continue in effect until such time as the timber in Lafayette and Perry Counties, Fla., then owned by the Carpenter-O'Brien Company, consisting of approximately 1,000,000,000 feet of pine, largely tributary to defendant's line extending from Newberry to Perry, Fla., had been transported. The contract provided for movement from points between Clara, and Perry, inclusive, to the plant of the lumber company at Eastport near Jacksonville, 142 to 166 miles, in trainloads of not less than 30 cars per day, or 60 cars every other day, Sunday and legal holidays excepted, at a rate of $12 per car, minimum 50,000 [fol. 1083] pounds, excess in proportion. It was stipulated that the contract should be subject to Federal and Florida laws and to the order of any court or commission of competent jurisdiction. Pursant to this contract defendant filed schedules with the Florida commission extending the Cummer scale to $11 per car for distances from 110 to 130 miles, and $12 per car for distances from 130 to 150 miles. That commission refused to permit the proposed rates to become effective because they were published to apply only on trainloads and were not available to all shippers. It further advised defendant that the rates themselves were too low and such as might be deemed confiscatory. The rates were republished to apply on carloads over all of the defendant's Florida lines and became effective October 30, 1914. On July 5, 1916, the scale was extended so as to apply the $12 rate for distances to 160 miles. On April 30, 1919, the scale

was further extended by establishing a rate of $16.50 for distances to 170 miles, the latter rate including the 25 per cent general increase of June 25, 1918. These rates were established and, as modified by the subsequent general increases and reduction, have been continued by defendant for the purpose of complying with its contractual obligations and not because it considers the scale proper for general application on intrastate traffic within Florida. The record shows 128,163 carloads containing approximately 700,000,000 feet of timber transported under the Carpenter-O'Brien contract from 1915 to 1926, both inclusive, and on argument defendant estimated that at the rate of movement at that time the contract would have from two to three years more to run. The record also shows that intervener Brooks-Scanlon Corporation on August 31, 1926, owned timber in Wakulla, Jefferson, Madison, Taylor, Lafayette, and Dixie Counties, Fla., estimated to contain 1,207,432,000 feet.

The Florida commission and the Florida interveners contend that the Florida intrastate rates are remunerative to defendant and should not be changed. They neither advocate nor oppose the extension of such rates interstate to Georgia. The intervening carriers contend that defendant's Florida intrastate rates are unreasonably low and are opposed to their continuance and to any reduction in defendant's interstate rates, contending that if the latter are reduced competition will necessitate corresponding reductions in their rates. Defendant does not consider the intrastate rates reasonably compensatory for general application throughout Florida but proposes to continue them, if permitted to do so, until the logs referred to in the Carpenter-O'Brien contract have been transported. It strongly opposes the use of such rates as a measure of reasonable interstate rates from Florida to Georgia. While not admitting that the interstate rates are unreasonable, [fol. 1084] defendant submitted a proposal to revise such rates down to the level of the Alabama intrastate log rates which became effective June 1, 1925, pursuant to an order of the Alabama Public Service Commission. The scale proposed covers distances up to 450 miles and would apply on logs, except walnut, cherry, and cedar, in carloads, minimum 40,000 pounds. The proposed rates are on substan-

tially the same basis as the present rates under the scales prescribed in Pierpont Mfg. Co. v. S. Ry. Co., 50 I. C. C. 81, from points in South Carolina south of Columbia to Savannah, Ga., and in Southern Veneer Asso. v. A. C. L. R. R. Co., 62 I. C. C. 669, on poplar and gum logs from points in South Carolina to destinations in North Carolina. They are on the same basis as those prescribed in Southern Cotton Oil Co. v. A. C. L. R. R. Co., 120 I. C. C. 190, on logs, except walnut, cherry, and cedar, from points on defendant's line south of Charleston to Savannah. Defendant expresses a willingness to establish these rates for interstate application over its entire system except south Florida, and would apply them intrastate in North Carolina, South Carolina, and Georgia if permitted by State authorities. From south Florida defendant would establish interstate rates approximately 15 per cent higher than from north Florida.

The present interstate and intrastate rates and the proposed interstate rates from north Florida in cents per 100 pounds, and the earnings thereunder per car of 50,000 pounds for distances to 170 miles, follow:

Distance	Florida-Georgia interstate		Florida intrastate		Proposed interstate	
	Rate	Earnings	Rate	Earnings	Rate	Earnings
	Cents		Cents		Cents	
5 miles	2.5	$12.50	1.71	$8.55	2.5	$12.50
10 miles	3	15.00	1.71	8.55	2.5	12.50
15 miles	3.5	17.50	1.71	8.55	3	15.00
20 miles	3.5	17.50	1.71	8.55	3	15.00
25 miles	4	20.00	1.71	8.55	3.5	17.50
30 miles	4	20.00	1.71	8.55	3.5	17.50
35 miles	4.5	22.50	1.71	8.55	4	20.00
40 miles	4.5	22.50	1.71	8.55	4	20.00
45 miles	5	25.00	2.10	10.50	4.5	22.50
50 miles	5	25.00	2.10	10.50	4.5	22.50
55 miles	5.5	27.50	2.10	10.50	4.5	22.50
60 miles	5.5	27.50	2.10	10.50	5	25.00
65 miles	6	30.00	2.30	11.50	5	25.00
70 miles	6	30.00	2.30	11.50	5	25.00
75 miles	6.5	32.50	2.30	11.50	5.5	27.50
80 miles	6.5	32.50	2.30	11.50	5.5	27.50
85 miles	7	35.00	2.30	11.50	5.5	27.50
90 miles	7	35.00	2.30	11.50	6	30.00
95 miles	7	35.00	2.60	13.00	6	30.00
100 miles	7	35.00	2.60	13.00	6	30.00
110 miles	7.5	37.50	2.80	14.00	6.5	32.50
120 miles	8	40.00	3.20	16.00	6.5	32.50
130 miles	8.5	42.50	3.20	16.00	7	35.00
140 miles	8.5	42.50	3.40	17.00	7	35.00
150 miles	9	45.00	3.40	17.00	7.5	37.50
160 miles	9	45.00	3.40	17.00	7.5	37.50
170 miles	9.5	47.50	3.70	18.50	8	40.00

[fol. 1085] Complainant introduced exhibits showing that defendant's proposed interstate rates are higher than its intrastate log rates in various of the southeastern States, than the average of such intrastate rates, and than the combined average of its intrastate and interstate rates. Rates substantially the same as those proposed by defendant were, however, prescribed by complainant in 1925 for application within Georgia, and while complainant's order was later rescinded, its rate expert testified that the rates then prescribed were in his opinion on a reasonably low basis.

Complainant also submitted numerous comparisons between the Florida intrastate rates and the interstate rates to show undue prejudice to interstate shippers to Bainbridge, Albany, Thomasville, Quitman, Valdosta, and Waycross, Ga., and undue preference of intrastate shippers to Florida points. No movement from Florida to Georgia is shown and complainant states that there can be none because of the substantially higher level of the rates interstate than intrastate. There are 64 sawmills along defendant's line in Georgia within 170 miles of Florida, and representatives of some of them testified that there is available timber in Florida which could be economically purchased and transported over defendant's line to Georgia mills if the rates were reasonable. The following will illustrate the comparisons referred to. The charges per car of 50,000 pounds from Live Oak, Fla., to Jacksonville, 128 miles, are $16, while from Live Oak to Waycross, 83 miles, the charges are $35.

Defendant submitted evidence purporting to show the estimated cost of transporting logs of the Brooks-Scanlon Corporation during September, 1926, from Perry and Carbur to Eastport, 166 and 144 miles, respectively; 1,371 loaded cars were transported in trainloads of from 39 to 50 cars, and the estimated cost per loaded car was $19.13. This cost does not include interest on investment except on equipment used. Based on a lading of 60,200 pounds, the average of 983 carloads transported for this shipper and intervener Putnam Lumber Company, the rate for the average distance would yield revenue of $20.47 per car, but $1.34 over the estimated cost of service for trainload movements. The Florida commission also introduced a cost study to show that the intrastate rates are remunerative to

defendant. Its estimate was that $14.62 represents the approximate cost per car of transporting logs in trainloads between the above points, which, deducted from the average revenue per car of $20.47, leaves a net revenue of $5.85 per car. Both cost studies are based on certain arbitrary assumptions and both are based on movements in trainloads from two points of origin to one destination. Neither can be accepted to show the approximate actual cost of transporting logs in single carloads intrastate throughout [fol. 1086] Florida. The record shows that while most of the Florida intrastate log traffic is in trainloads, there is a substantial movement over defendant's line in less than trainloads.

Defendant also shows that the earnings under the Florida intrastate rates are materially lower than the earnings under the interstate rates from Florida to Georgia on brick, sand, lime, and cement. For example, it shows that the interstate rate on sand and gravel for 160 miles, equivalent to 6.75 cents per 100 pounds, yields revenue of $62.46 per car based on a lading of 92,540 pounds, as contrasted with $18.70 on logs, based on a lading of 55,000 pounds. The weights used were the actual average weights on defendant's lines for 1925. It is also shown that these Florida intrastate rates are considerably lower than any other rates, intrastate or interstate; referred to of record.

Witnesses for the Florida interveners testified that any material increase in the Florida intrastate rates would either cause them to move their plants to the timber or abandon operations, in either of which events defendant would lose considerable traffic; that these interveners have expended millions in the development of their properties, communities have grown up in the vicinity of their mills, and abandonment of the present mill sites would result in heavy losses to them and to their employees; that it would cost intervener Brooks-Scanlon Corporation between three and four million dollars to move its plant from Eastport, which would prbably lose most of its 5,000 inhabitants, as practically every family is dependent upon the operation of the plant; and that other Florida lumber companies and communities would be similarly affected. They also testified that there exists no Florida timber in commercial volume within 170 miles of Georgia which could be acquired by

Georgia log shippers, as all of such timber is owned by Florida mills; and that while there are a few scattered areas of timber in north Florida held largely by farmers for their personal requirements, successful exploitation of these tracts, because of their limited extent, could only be accomplished by the use of portable mills operating in close proximity to the standing timber.

The interstate rates which defendant proposes from north Florida are in our opinion reasonable. They are, as heretofore stated, the same as those prescribed by the Alabama commission for intrastate application within that State, and by us for interstate application in other sections of the Southeast. All of the Florida points from which they will apply appear to be located south of the line of the Seaboard Air Line extending from Jacksonville to River Junction, from and to which we invariably prescribe maximum reasonable rates that are higher than from and to other points in southern territory.

[fol. 1087] It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory. The rate for 160 miles yields but 4.25 mills a ton-mile, and, based on a lading of 60,200 pounds, 12.8 cents a car-mile. They are approximately one-half of the rates prescribed in Rates on Chert, Clay, Sand, and Gravel, 122 I. C. C. 133, on sand and gravel in the Southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C. 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line. As stated in the original report in that case, sand and gravel are of unusual low value, it being doubtful whether any traffic moves which is worth less at point of production, load very heavily, and normally move in considerable volume without unusual switching operations at either end and without anything in the nature of special services. The evidence is not convincing that logs could not or would not move from Florida to Georgia if the interstate rates and the Florida intrastate rates were on the same level.

We find that the interstate rates on logs, except walnut, cherry, and cedar, in carloads, from points on defendant's lines in Florida north of and including Jacksonville,

Gainesville, Burnett's Lake, and High Springs, to destinations on its lines in Georgia for distances not exceeding 170 miles are, and for the future will be, unreasonable to the extent that they exceed, or may exceed, the following distance scale of rates in cents per 100 pounds, minimum weight 40,000 pounds; which rates we find are and will be reasonable:

Distance	Rate, cents
10 miles and less	2.5
20 miles and over 10	3
30 miles and over 20	3.5
40 miles and over 30	4
55 miles and over 40	4.5
70 miles and over 55	5
85 miles and over 70	5.5
100 miles and over 85	6
120 miles and over 100	6.5
140 miles and over 120	7
160 miles and over 140	7.5
170 miles and over 160	8

We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce.

We further find that said undue preference and advantage, undue prejudice, and unjust discrimination can and [fol. 1088] should be removed by the establishment of rates for intrastate application within Florida which shall correspond with the rates herein found reasonable for interstate application from Florida to Georgia.

We further find that whether the aforesaid rates pertain to transportation in interstate commerce or to transportation in intrastate commerce the transportation services in each instance are performed by defendant under substantially similar circumstances and conditions.

An appropriate order will be entered.

[fol. 1089] Order

At a Session of the Interstate Commerce Commission, Division 4, held at its office, in Washington, D. C., on the 2nd day of August, A. D. 1928.

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendant be, and it is hereby, notified and required to cease and desist, on or before October 10, 1928, and thereafter to abstain, from publishing, demanding, or collecting its present rates for the transportation of logs, except walnut, cherry, and cedar, in carloads, from and to the points designated in the next succeeding paragraph hereof.

It is further ordered, That said defendant be, and it is hereby, notified and required to establish, on or before October 10, 1928, upon notice to this commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of logs, except walnut, cherry, and cedar, in carloads, from points on its lines in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, to destinations on its lines in the State of Georgia, the following rates in cents per 100 pounds, subject to a minimum weight of 40,000 pounds:

Distance	Rate, cents
10 miles and less	2.5
20 miles and over 10	3
30 miles and over 20	3.5
40 miles and over 30	4
55 miles and over 40	4.5
70 miles and over 55	5
85 miles and over 70	5.5
100 miles and over 85	6
120 miles and over 100	6.5
140 miles and over 120	7
160 miles and over 140	7.5
170 miles and over 160	8

[fol. 1090] It is further ordered, That said defendant be, and it is hereby, notified and required to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain rates for the transportation of logs, except walnut, cherry, and cedar, in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which shall be the same as those prescribed in the next preceding paragraph hereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia.

And it is further ordered, That this order shall continue in force until the further order of the commission.

By the Commission, division 4.

George B. McGinty, Secretary. (Seal.)

[fol. 1091] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION OF BROOKS-SCANLON CORPORATION, PUTNAM LUMBER COMPANY, WILSON CYPRESS COMPANY, CUMMER LUMBER COMPANY, CUMMER CYPRESS COMPANY, JACKSONVILLE TRAFFIC BUREAU, AND SOUTHERN PINE ASSOCIATION, INTERVENING DEFENDANTS, FOR POSTPONEMENT OF EFFECTIVE DATE OF ORDER OF DIVISION 4

Come now the intervening shipper defendants in the above entitled proceeding and respectfully pray that the

effective date of the Order of Division 4, previously entered herein, be postponed for ninety days subsequent to October 10. In support of said petition such interveners respectfully show as follows:

That under the decision and order in this proceeding the intrastate rates on logs, etc., between points in Florida would be subjected to material increases. That numerous mills within the State of Florida which consume logs cut at nearby Florida points would, under the said increased rates, suffer by reason of these material advances in transportation charges. That these petitioners have a vital interest in this proceeding.

That the decision of Division 4 contains statements of fact which are incorrect, contrary to the evidence and which [fol. 1092] have a vital bearing upon the conclusions reached.

That these petitioners desire sufficient time within which to prepare a petition for re-argument and reconsideration. But that in order to prepare such a petition, setting forth by necessary references to the transcript of record the true facts in this case, additional time will be required. That the effective date of the Commission's order, namely, October 10, 1928, allows, in petitioner's opinion, an unnecessarily short time between the receipt of the Commission's decision, namely the middle of August, and the effective date thereof, to enable these petitioners to give adequate study to the report and to prepare their petition for re-argument and reconsideration.

That under the Division's decision the prescribed rates on intrastate traffic would be published on five days' notice instead of the usual statutory period of not lest than thirty days.

That in view of the fact that the decision of Division 4 would ignore and override the statutory requirements of the State of Florida with respect to changes in intrastate rates; in view of the fact that the decision of Division 4 is a peremptory exercise of Federal power over intrastate rates; in view of the fact that the conclusions of the Division are without evidence in support thereof and contrary to the weight of the evidence; and in view of the fact that the method prescribed by it for removing the alleged undue prejudice would not result in a movement of logs from

Florida points to Georgia points, these petitioners respectfully request that Division 4 issues a further order in this proceeding postponing the effective date of said order for at least ninety days beyond October 10, 1928.

These petitioners allege, on behalf of the lumber mills within the State of Florida which are owned by Companies [fol. 1093] parties to this proceeding, that the conclusions of the Commission are unsound and unwarranted in fact and in law, and that the order, if not postponed, will subject these petitioners to irreparable damages and deprive them of their lawful rights.

In submitting this petition for a stay of the order in this proceeding these petitioners are of the opinion that it will require about three weeks for the preparation of a careful and detailed analysis of the record which they shall offer in support of their allegations that the Division's report contains erroneous statements of vital facts; and that after said petition is prepared and served upon the parties it will require some weeks for answers thereto; that in order that the entire Commission may have adequate time for a careful consideration of the petition for re-argument and reconsideration and answers thereto, and for notice to the parties of the Commission's action thereon, it would require approximately six weeks. We estimate the total minimum time that would be required would be in the neighborhood of ninety days after October 10th.

Respectfully submitted.

Brooks-Scanlon Corporation, by Edward P. Sanborn, Geo. L. Rutherford, Attorneys. Putnam Lumber Company, by H. P. Adair, Attorney. Wilson Cypress Company, by H. P. Osborne, Attorney. Cummer Lumber Company, Cummer Cypress Company, by E. W. Mitchell, Attorney. Jacksonville Traffic Bureau, by J. O. Cassidy, Attorney. Southern Pine Association, by A. G. T. Moore, Attorney. Chas E. Cotterill, of Counsel.

[fol. 1094] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR POSTPONEMENT OF EFFECTIVE DATE OF ORDER—
Filed Aug. 22, 1928

To the Interstate Commerce Commission, Washington, D. C.:

Comes now the Railroad Commission of the State of Florida by Fred H. Davis, Attorney General of the State of Florida, parties to this proceeding, and, on behalf of the people of the State of Florida, respectfully Petition and pray that Division 4 of the Interstate Commerce Commission postpone and set aside the order which the said Division 4 has entered in this case, the same to become effective on October 10, 1928.

Your Petitioners respectfully show:

That the decision and order in this proceeding were not served upon these petitioners until the middle of August, 1928.

That the said decision and order, if not postponed, will require the defendant Atlantic Coast Line Railroad Company to increase the rates for the transportation of logs from and to points on its lines wholly within the state of Florida for application on intrastate traffic.

That under the laws of the sovereign state of Florida the common carrier railroads, including the said defendant Atlantic Coast Line Railroad Company, are forbidden and prohibited from changing their intrastate rates without first having applied to the Railroad Commission of the State of Florida and receiving authority therefor from the said Commission.

That no such application for changes in the intrastate rates on logs has been filed with the Railroad Commission of Florida for authority to increase its rates on this class of traffic;

[fol. 1095] That the said order of the Interstate Commerce Commission in this proceeding will, if not postponed, require the said Defendant Atlantic Coast Line Railroad Company to disobey and disregard the express statutory laws of the state of Florida.

That, in the opinion of these Petitioners, the said Decision and order of Division 4 in several important aspects fails to conform to the evidence adduced by these Petitioners and other intervening defendants, and that the conclusions reached by the said Division 4, as a result of errors of fact, would be different if the true facts were better known to and understood by the said Division.

That, in view of these opinions of Petitioners they have in prospect the purpose and desire to prepare, after careful study of the evidence of record, a Petition for Further Argument and Reconsideration in this Proceeding, setting forth in detail the evidence of record in support of allegations of errors of fact and errors in the conclusions based thereon.

That these Petitioners find that it will be impracticable to prepare and present to the said Interstate Commerce Commission a carefully prepared petition of the kind they have in mind and have the said petition served upon the parties, answers thereto returned and proper consideration thereof given thereto by the Interstate Commerce Commission prior to the effective date of the said order, namely October 10, 1928.

Wherefore these Petitioners, in order to make certain that no errors of fact are made the basis of the conclusions of the Interstate Commerce Commission, and in order that there may be proper time for adequate consideration of the Petition for Reargument and Reconsideration which these Petitioners desire to prepare and file, present this their Petition for a stay of the effective date of the said order of Division 4 in this case for a period of not less than 90 days after October 10, 1828.

Railroad Commission of the State of Florida, Fred H. Davis, by Fred H. Davis, Attorney General of the State of Florida.

Tallahassee, Fla., August 21, 1928.

[fol. 1096] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION OF RAILROAD COMMISSION, STATE OF FLORIDA, FOR Postponement of Effective Date of Commission's Order Prescribing Intrastate Rates on Logs Over the Atlantic Coast Line Railroad in Florida.

Now comes the Railroad Commission, State of Florida and respectfully petitions the Interstate Commerce Commission for a sixty (60) day postponement of the effective date of the order entered prescribing intrastate rates on logs over The Atlantic Coast Line Railroad in Florida to take effect November 10th, 1928, and as grounds, respectfully show:

1

That on August 2nd, A. D. 1928, Division 4 entered an order prescribing the rates on logs intrastate in Florida, over The Atlantic Coast Line Railroad effective October 10th, 1928. That thereafter, on, to-wit: August 27th, A. D. 1928, an order was entered postponing the effective date of [fol. 1097] Division Four's order and making the rate prescribed by Division Four take effect on or before November 10th, 1928. That this last mentioned order was entered after your petitioner had filed its petition for postponement of the effective date of said order of Division 4 in order to allow your petitioner sufficient time to prepare and file a petition for reconsideration and reargument before the entire Commission and to have the same acted upon.

2

That your Petitioner on October 1st, 1928, filed its petition for reconsideration and reargument of this case before the entire Commission and that the same is now pending and no order has been entered thereon. That your Petitioner does not believe the Commission as a whole will have sufficient time to carefully consider your Petitioner's request for reconsideration and reargument of this case prior to November 10th, 1928, the present effective date of Divi-

sion 4's order; and in the event the Commission refuses to reconsider this case and enters its order denying the petition for reconsideration and reargument before the 10th day of November, 1928, sufficient time will not be given the lumber interests directly affected in which to take such action as may be necessary to protect their interests.

[fol. 1098] The Petitioner therefore respectfully prays that Division 4 issue a further order in this proceeding postponing the effective date of its present order for a period of at least sixty (60) days subsequent to November 10th, 1928.

Respectfully submitted.

Railroad Commission, State of Florida, by Fred H. Davis, Attorney General.

[fol. 1099] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER POSTPONING EFFECTIVE DATE OF ORDER—Oct. 19, 1928

Upon further consideration of the record in the above-entitled proceeding, and for good cause shown:

It is ordered, That the effective date of the order heretofore entered in this proceeding on August 27, 1928, be, and it is hereby, postponed to December 10, 1928.

By the commission, division 4.

George B. McGinty, Secretary. (Seal.)

[fol. 1100] STATE OF GEORGIA:

Georgia Public Service Commission, Atlanta

Commissioners: James A. Perry, Chairman; Albert J. Woodruff, Vice-Chairman; Walter R. McDonald, Calvin W. Parker, Perry T. Knight. Robt. N. Springfield, Secretary; E. M. Price, Rate Expert; S. J. Smith, Jr., Special Attorney; J. Houstoun Johnston, Consulting Engineer

File 16197

BEFORE INTERSTATE COMMERCE COMMISSION, October 19, 1928

[Title omitted]

PROTESTING PETITION FOR POSTPONEMENT OF EFFECTIVE DATE OF ORDER

Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C.:

The Georgia Public Service Commission, complainant in the above stated docket, files this its protest against petition of Railroad Commission of State of Florida, Brooks-Scanlon Corporation, et al, and other intervenors for further postponement of effective date of your order in this case.

The original order of your Honorable Commission is dated August 2, 1928, and was made effective October 10, 1928. These same intervenors petitioned you for a postponement of ninety days of the effective date of your order in order that they might have sufficient time to prepare a petition for reargument and reconsideration. The Georgia Public Service Commission, complainant, protested any postponement of the effective date of your order but by order dated August 27, 1928, you did grant postponement of the effective date of the rates covered by the fourth paragraph of your order until November 10, 1928, and it was suggested by the Honorable Commissioner Meyer in his letter dated August 29th, addressed to Honorable Fred H. Davis, Attorney General, State of Florida, that the petition for reargument and reconsideration be filed on or before

October 1st. The suggestion of Honorable Commissioner Meyer was complied with and the complainant, Georgia Public Service Commission, filed brief in opposition to said petition October 6, 1928.

[fol. 1101] The complainant, Georgia Public Service Commission, is in full accord with the view expressed by Honorable Commissioner Meyer in his letter to Honorable Fred H. Davis, Attorney General, State of Florida, to the effect that, "it is believed that the postponement already made will give the interested parties ample time to file a petition for reconsideration and reargument, the opposing parties time to answer, and the Commission time to dispose of the petition." The prediction of Honorable Commissioner Meyer has already been fulfilled insofar as the petitioning intervenors and the complainant are concerned, in that the petition for reargument and reconsideration was filed October 1st and the complainant, Georgia Public Service Commission, promptly filed brief in opposition to same.

The only reason advanced by the petitioning intervenors for further postponement is the presumption or fear that your Honorable Commission will not act on their petition for reargument and reconsideration in sufficient time prior to November 10th to enable the petitioning intervenors to take such action as they may deem fit or necessary to protect their interests. In other words, these petitioning intervenors doubt the accuracy of the estimate of time necessary as made by Honorable Commissioner Meyer, notwithstanding the fact that Honorable Commissioner Meyer is a member of Division 4 and has given this case thorough consideration before issuing the order first made effective October 10th. The evidence in this case shows clearly that the Georgia interests are being greatly injured under the present adjustment of rates and this condition will be relieved only when the findings in your order of August 2, 1928, are made effective. This complaint has been pending before your Honorable Commission for many months and the complainant, Georgia Public Service Commission, urges that no further delay be granted.

Respectfully submitted.

Georgia Public Service Commission, by Jas. A. Perry, Chairman, by E. M. Price, Rate Expert.

[fol. 1102] [File endorsement omitted]

STATE OF GEORGIA:

Georgia Public Service Commission, Atlanta

Commissioners: James A. Perry, Chairman; Albert J. Woodruff, Vice-Chairman; Walter R. McDonald, Calvin W. Parker, Perry T. Knight. Robt. N. Springfield, Secretary; E. M. Price, Rate Expert; S. J. Smith, Jr., Special Attorney; J. Houstoun Johnston, Consulting Engineer

File 16197

BEFORE INTERSTATE COMMERCE COMMISSION, AUGUST 24TH, 1928

[Title omitted]

PROTESTING PETITION FOR POSTPONEMENT OF EFFECTIVE DATE OF ORDER—Filed Aug. 27, 1928

Hon. George B. McGinty, Secretary Interstate Commerce Commission, Washington, D. C.

The Georgia Public Service Commission complainant in the above stated docket, files this, its protest against petition of the Railroad Commission of the State of Florida and other intervenors for a postponement of the effective date of your order in said case.

The paragraphs of the petition of the Railroad Commission of Florida and other intervenors are not numbered. However, we will endeavor to answer each paragraph consecutively, giving our reasons why said petition should not be granted.

1. The decision of your Honorable Commission is dated August 2, 1928, and was received by the Georgia Public Service Commission August 17, 1928, and petitioners, Railroad Commission of Florida, admit same was received by [fol. 1103] them on or about that date. Therefore, admittedly the order in said case was received fifty-four days before the effective date, which in our opinion is in abundance of time for the Florida Railroad Commission and

other intervenors to prepare and file briefs or protests without postponement of the effective date of said order.

2. We admit that the decision of your Honorable Commission will require the defendant, Atlantic Coast Line Railroad Company, to increase the rates for the transportation of logs from and to points on its lines wholly within the State of Florida for application on Intrastate traffic, but the decision is amply suported by the law and evidence in the case.

In addition to the preponderance of evidence consisting of rate exhibits showing the unreasonableness of the Florida Intrastate rates as compared with the Interstate rates from Florida to Georgia, your Honorable Commission is respectfully referred to Exhibit No. 16 filed by witness Perrin which is a letter dated at Tallahassee, Florida, August 18, 1915, addressed to E. C. McLeod, Kendrick, Florida, by the Florida Railroad Commission, reading in part as follows:

"Beg to advise that the Commissioners thoroughly agree with you that this rate is too low. It was not made by the Commission, nor was it put into effect with our approval. On the contrary, it was made effective contrary to the advice and wishes of the Commission. However, in order that you may become familiar with the situation, it will be necessary for me to go into the history of this rate at some length.

In April, 1914, it came to the attention—of the Commission that the Atlantic Coast Line was operating a special rate on logs in trainload lots from stations on the Newberry district to Milldale, Fla., that were not only much lower than the Commission Class P rates, which were applicable on logs, but they were much lower than any other rates that the Atlantic Coast Line had in effect on logs between points in this state.

[fol. 1104] To be perfectly frank, in the opinion of the Commission, this was a preferential rate, made in the interest of the Cummer Lumber Company, because the timber holdings of the Cummer Lumber Company, largely lay on the Newberry District of the Atlantic Coast Line, and because of the further fact that there was no mill at Milldale except that of the Cummer Lumber Company."

It will be noted from the above quoted Exhibit the Railroad Commission of Florida admitted that the rates under

review were too low and were not made by the Florida Railroad Commission or put into effect with the approval of the Florida Railroad Commission.

3. In answer to this paragraph we submit that after the most thorough investigation which your Honorable Commission has made in this proceeding, including the admission on the part of the Railroad Commission of Florida that the Intrastate rates in Florida under review are too low, your decision is in accord with paragraph 4 of Section 13 of the Interstate Commerce Act; viz,

"Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any state or the decision or order of any state authority to the contrary notwithstanding."

4. The Georgia Public Service Commission submits that under the provisions of the order of your Honorable Commission it is not necessary for the defendant, Atlantic Coast [fol. 1105] Line Railroad Company, to file a petition with the Railroad Commission of Florida, and in obeying the mandates of the order of your Honorable Commission the defendant, Atlantic Coast Line Railroad Company, would not be guilty of an illegal act by disregarding an express statute law of the State of Florida.

5. Answered in Paragraph 4.

6. Petitioners for postponement, state:

"That, in the opinion of these Petitioners, the said Decision and order of Division 4 in several important aspects fails to conform to the evidence adduced by these Petitioners and other intervening defendants, and that the conclusions reached by the said Division 4, as a result of errors of fact, would be different if the true facts were better known to and understood by the said Division."

The Georgia Public Service Commission, complainant in this proceeding, submits that this complaint was acknowledged by your Honorable Commission on May 3, 1926. Hearings were had at Valdosta, Georgia, beginning October 26, 1926, and again at Jacksonville, Florida, beginning January 18, 1927. Briefs were filed with your Honorable Commission May 1, 1927. The Examiner's proposed report was submitted on or about August 15, 1927, and exceptions to the Examiner's proposed report were filed September 6, 1927, and oral argument was had before Division 4 December 16, 1927. The final order of your Honorable Commission is dated August 2, 1928, and it is ridiculous for the petitioners for postponement of effective date of this order to now say that your order, "in several important aspects, fails to conform to the evidence adduced by the Florida Railroad Commission and other intervening defendants, and the conclusions reached, as a result of errors of fact, would be different if the true facts were better known to, and understood by, the said Division 4."
[fol. 1106] The Florida Railroad Commission and all other interveners have had every opportunity to submit all relevant facts by way of evidence, brief and oral argument, and it is nothing short of a reflection upon the members of your Honorable Commission constituting Division 4 for the petitioners for postponement to now charge that, after having the matter under consideration for eight months after the close of oral argument, you have overlooked any important evidence in the case.

7. Petitioners for postponement state, "they have in prospect the purpose and desire to prepare, after careful study of the evidence of record, a petition for further argument and reconsideration in this proceeding."

At the time this complaint was filed with your Honorable Commission by the Georgia Public Service Commission a copy was furnished to the Railroad Commission of Florida. Hearings were had at Valdosta, Georgia, and Jacksonville, Florida, briefs were filed, the proposed report of the Examiner was submitted and oral argument was concluded on December 16, 1927. In other words, the petitioners for postponement, Florida Railroad Commission, have had more than two years to study this complaint and it is absurd to now come before your Commission and ask for additional time to make "a careful study of the evidence of record."

8. Petitioners for postponement state that "it will be impracticable to prepare and present to the Interstate Commerce Commission a carefully prepared petition of the kind they have in mind and have the said petition served upon the parties, answers thereto returned and proper consideration thereof given thereto by the Interstate Commerce Commission prior to the effective date of the said order, [fol. 1107] namely October 10, 1928."

We feel that this part of the petition for postponement is fully answered by Paragraph 7. After the great lapse of time since the beginning of this case and the opportunities allowed by your Honorable Commission to all parties of record to submit briefs and oral argument we can not conceive of any party of record requiring any such additional time as petitioned for by the petitioners for postponement.

The evidence in this case is clear that the lumber manufacturers in Georgia are being grossly discriminated against by the prevailing rates in Florida and the rates from Florida to Georgia, and your Honorable Commission has correctly found that this discrimination should be removed and has prescribed the manner by which the discrimination shall be removed. This discrimination has existed for a long period of time and protestants to the petition for postponement urge that no further delay be granted, and that the relief to the Georgia saw mill interest, as provided for in your order, be allowed to become effective on October 10, 1928.

The record in this case shows that it has been one of continuon delay, at the request of the Florida Railroad Com-

mission and other intervenors. After a three days hearing at Valdosta intervenors submitted no evidence but asked for this opportunity at another hearing. The hearing at Jacksonville, Florida, was first assigned for January 5, 1927, but was postponed to January 18, 1927. Briefs were required to be filed by April 15, 1927, but at the request of intervenors this time was extended to May 1, 1927.

[fol. 1108] It is the opinion of protestants, Georgia Public Service Commission, that the purpose of the petition for postponement of effective date of the order of your Honorable Commission is to further and unnecessarily delay the removing of the long existing preferential rates to the great injury of the Georgia interests now enjoyed by the Florida saw mill interests and we insist that this should not be permitted, as petitioners for postponement have failed absolutely to advance any reason why the petition should be granted and same should be denied.

Respectfully submitted.

Georgia Public Service Commission, by James A. Perry, Chairman, by E. M. Price, Rate Expert.

[fols. 1109 & 1110] INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER RE EFFECTIVE DATE—Aug. 27, 1928

Upon further consideration of the record in the above-entitled proceeding, and for good cause shown:

It is ordered, That the fourth paragraph of the order heretofore entered in this proceeding on August 2, 1928, shall become effective on or before November 10, 1928, upon notice to this commission and to the general public by not less than five days' filing and posting in the manner prescribed in section 6 of the interstate commerce act.

It is further ordered, That in all other respects the said order of August 2, 1928, shall remain in full force and effect.

By the commission, division 4.

George B. McGinty, Secretary. (Seal.)

[fol. 1111] Index

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[fol. 1113] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR REARGUMENT AND RECONSIDERATION ON BEHALF of Brooks-Scanlon Corporation, Putnam Lumber Company, Wilson Cypress Company, Cummer Lumber Company, Cummer Cypress Company, Jacksonville Traffic Bureau, Inc., Southeastern Forest Products Association, Successor to Georgia-Florida Saw Mill Association, Southern Cypress Manufacturers Association, and Southern Pine Association, Intervening Defendants

Come now the Intervenors, named above, and respectfully petition the Interstate Commerce Commission to grant re-argument and re-consideration, and to vacate and set aside the order of Division 4 heretofore entered in this proceeding.

I.—Statement

Conclusions of Division 4

In its report Division 4 found that the interstate rates on logs, except walnut, cherry and cedar, in carloads from Florida points north of and including Jacksonville, Gainesville, Burnetts Lake and High Springs, Fla., to destinations [fol. 1114] in South Georgia for distances of not over 170 miles were and are unjust and unreasonable. In its order the Division prescribed a distance scale of maximum reasonable rates from North Florida to South Georgia.

Division 4 also found that the Florida intrastate log rates of the defendant resulted in undue preference and advantage of shippers of intrastate traffic within the state of Florida, in undue prejudice to shippers of interstate traffic from points in the state of Florida to points in the state of Georgia and in unjust discrimination against interstate commerce. The Division prescribed the same scale of rates for application on defendant's line within the state of Florida, to cure the alleged undue prejudice and discrimination.

This petition for re-argument and re-consideration deals with the findings of undue prejudice and unjust discrimina-

tion. The prescribed maximum reasonable rates from Florida to Georgia have been published to become effective October 10, 1928. The effective date of the intrastate rates has been modified so that the rates will become effective on November 10, 1928 in accordance with a supplemental order of Division 4, issued on August 27, 1928 for the purpose of allowing these petitioners and others sufficient opportunity to present their petitions for re-argument and re-consideration.

In this petition we shall deal separately with the finding of undue prejudice against Georgia shippers and the finding of unjust discrimination against interstate commerce.

Petitioners allege that the finding of undue prejudice against Georgia shippers is without any evidence to support it, in that no Georgia shippers are hurt by the existing rates and no Georgia shippers would be benefited by the [fol. 1115] prescribed rates; and in that no interstate traffic in logs is moving from North Florida to Georgia today and there could not, by any possibility, be any movement in the future under the rates prescribed by Division 4. Petitioners will attempt to show that in these major particulars the conclusions of the Division are without foundation.

Petitioners further alleged that the finding of unjust discrimination against interstate commerce is wholly unsupported by evidence, is based upon several erroneous assumptions of law and of fact, and that under the issues of this case as defined and restricted at the hearing the Interstate Commerce Commission is without authority to regulate this intrastate commerce.

II.—Finding of Undue Prejudice of Georgia Shippers Should be Reversed

1. No Georgia Mills are Prejudiced

A careful review of the evidence is convincing that no Georgia mills are prejudiced by existing log rates within Florida and no Georgia mills, or user of logs, has any desire to see the Florida intrastate rates changed.

Mr. Price, the rate expert of the Georgia Commission, and sole witness introduced by that Commission at the original hearing, offered rate exhibits only. If any Georgia

mills had been concerned with the Florida intrastate rates or the interstate rates from Florida to Georgia they would have appeared at the original hearing in support of the complaint. Many Georgia mills, through their Associations, actually opposed the complaint, thus proving the lack of foundation of any real prejudice against Georgia mills.

[fol. 1116] Q. Mr. Price do you know whether there is any movement of logs from Florida shipping points to Georgia destinations?

A. No, I do not know of my own knowledge, but from the investigation I have made I do not think it possible for there to be any extensive movement (Record page 16).

Evidently Mr. Price was sufficiently acquainted with the lumber business in this territory to know that the only practical way to use logs is by mills located in the timber. Evidently that is what he had in mind although he is not qualified to testify concerning any present or prospective movement.

Petitioners challenge anyone to point to the testimony of any witness in this case as supporting in any measure whatsoever by competent evidence that any Georgia mill is in competition with any Florida mill for North Florida logs, that any Georgia mill has ever made a shipment of logs from North Florida to Georgia or that any Georgia mill operator has any real expectancy, desire or ability to ship any logs or to compete with any Florida mills in the purchase of logs in North Florida. Under these conditions we respectfully submit that the finding of undue prejudice of Georgia shippers is wholly without any evidence to show that any Georgia shipper has any real or substantial interest in this proceeding or in the measure of the Florida intrastate log rates, or that the mere difference in rates restricts or retards the interstate movement from Florida to Georgia in any degree.

2. The Evidence Proves Conclusively That There is No Actual or Potential Movement of Florida Logs to Georgia

The Division's Report finds that there is no present move-
[fol. 1117] ment of Florida logs to Georgia and that there

has been none. However, the Division, ignoring the evidence, indulged in the following erroneous assumption:

"The evidence is not convincing that logs could not or would not move from Florida to Georgia if the interstate rates and the Florida intrastate rates were on the same level."

We must interpret this finding in the light of the scale of maximum reasonable rates prescribed by Division 4. Having that in mind we shall show by reference to the record that the finding above quoted is directly contrary to the evidence offered by numerous expert witnesses and that there is no competent evidence in the record to support the Division's finding.

At the original hearing Witness Simmons admitted that he did not know of any available logs in Florida on the Atlantic Coast Line which could be shipped to Georgia mills. (Record page 86). Witness Jackson testified with respect to the existence of a single tract of timber in Florida, but our witnesses proved conclusively that that tract could not be purchased and used by any Georgia mill. (Record pages 61-65, 693.) Thus, up to the end of the first hearing, it could not be said that complainant had established the possibility of any interstate movement of logs over the Atlantic Coast Line from Florida to Georgia irrespective of any basis of rates that might be established. Later, it tendered Witnesses Davies, Jackson, and Dr. Giddens. Mr. Jackson's attempt to state that there was available timber in Florida was completely overthrown and discountenanced by cross-examination which showed conclusively that there was no basis for his attempt to testify to this effect (Pages 454-459).

[fol. 1118] Q. Mr. Jackson, would this possible source of timber that you speak of in Florida be a large or a small tract?

A. Why it would be made up of small tracts I would say.

Q. Scattered?

A. I do not know of any large tracts; the fact of the business is we have not spent any money looking around down there.

Q. You have never yourself personally investigated the real conditions have you?

A. No, sir (page 472).

The extract above clearly shows the lack of any real foundation for the Division's assumption that there would be a movement of logs from North Florida to Georgia.

Mr. Davies, another witness by whom the Georgia Commission attempted to show possibility of future movement, admitted on cross-examination that "you would not undertake to engage in the establishment of a hardwood lumber business with a supply that would only be good for one year" (page- 424-441). Thus, after attempting to create the impression that he knew of an available supply of timber in Florida, Mr. Davies finally told the whole truth and frankly admitted that the tracts he had in mind were so small that he would not really undertake to engage in the business on the strength of them. Furthermore the witness refused to disclose the location of such supposedly available small tracts, thereby discrediting his testimony in its entirety upon this point. (Rec. page 446.)

Dr. Giddens exhibited from the very outset an unusual display of partisanship and bias. When questioned about his implied reference to certain tracts of timber in Florida the witness was asked to describe the location of any avail- [fol. 1119] able tracts which he had in mind. The witness was thus caught with the inability to substantiate his direct testimony and to save himself from impeachment refused to identify in any respect the location, character or size of any tracts of commercial timber in Florida. (Rec. pages 379, 380, 382, 383.)

Such is the whole testimony of complainant in its vain attempt to create an impression of the availability of Florida timber for shipment to Georgia mills.

3. Burden of Proof was Upon Complainant

Attention of the Commission is directed to the fact that Division 4's finding that "The evidence is not convincing that logs could not or would not move from Florida to Georgia," etc., apparently assumes that the burden of proof was upon the defendant and defendant interveners in this case to prove the impossibility or impracticability of any future movement. In this assumption the Division erred as a matter of law. The burden of proof was upon complainant to prove that there was competition between the Georgia mills and the Florida mills and that there was

either actual or potential movement of logs from Florida to Georgia. The extracts from the record above show conclusively that complainant utterly failed to establish the burden of proof in these two vital particulars.

The defendant interveners, notwithstanding that the burden of proof was not met by complainant, did undertake to prove conclusively that, for economic reasons, there is no possibility of any future movement of Florida logs to Georgia. This evidence consisted of the testimony of six competent experts on Florida timber conditions who have first-hand and intimate knowledge of the real conditions. [fol. 1120] The testimony of these six witnesses, the value of which has never been challenged or disputed in any degree, proves conclusively that there is no possibility of any future movement of Florida logs to Georgia, regardless of the measure of the rates which may be established.

Mr. L. C. Crockett, was called to the stand by the intervening defendants, (Rec. p. 790), and was qualified as an expert forest engineer of the highest order. He described his years of experience with, and studies of, Florida timber conditions. Speaking of the availability of supplies of timber in Florida the witness testified as follows:

"The only remaining timber in commercial volume belongs to, and it is being cut by, the large lumber mills in Florida owned by Brooks-Scanlon Corporation, and their associates, Burton Swartz Cypress Company of Florida, the Putnam Lumber Company, * * *. Rec. p. 792.

The witness prepared and introduced a map (Exhibit 44) setting forth accurately the location and ownership of the only timber on the Atlantic Coast Line within 170 miles of Georgia.

Mr. W. E. McCain, of Madison, Florida, was then tendered as a witness. He qualified as a timber cruiser in Florida for twenty five years. (Rec. p. 810). From the fact of his employment by the Brooks-Scanlon Corporation for twenty-five years his competency must be recognized. It is the nature of his work to familiarize himself with conditions as to standing timber in the State of Florida; and from the vantage point of such intimate experience and first-hand acquaintanceship with the facts he testified as follows:

Question. What, in substance, is the situation, Mr. McCain?

[fol. 1121] Answer. It is just as Mr. Crockett has testified; except for two areas which he has shown on his map (one of which is the Eppinger & Russell tract) there is no available Coast Line timber in northern Florida in commercial quantities; there are scattered small pieces owned by settlers or farmers, which we speak of as odds and ends that he may have after his clearing has come in on his land he might own * * * (Rec. p. 810).

Perhaps no more qualified and experienced man could be found in the country to testify as to the availability of Florida timber than Mr. M. J. Scanlon, who was engaged in the manufacture of lumber in Florida, British Columbia, Canada, Washington, Oregon, California, Cuba and the Bahama Islands, and has spent numerous years in constant, intimate and first-hand contact with all phases of the lumber industry in Florida and elsewhere. Mr. Scanlon testified as follows (Rec. pp. 821 et seq.):

Question. So far as you are advised, is all the available commercial timber in the northern portion of Florida gone?

Answer. Yes, sir (Rec. p. 825).

Question. And there is no available timber up there for merchantable purposes that is not already owned by the mills in Florida?

Answer. I don't think so, no sir (Rec. p. 834).

* * * * * * *

Answer. We have down here at Eastport employees in that mill alone, some seven hundred and fifty people; and based on the usual calculation of four and one half to five persons dependent on every man in the employ of an industrial company, we have some thirty-five hundred people in Eastport. They are a happy lot. They are prosperous. They have work every working day in the year that they want to work, and they can't stay on our payrolls unless they do work. We have built homes for them—houses, [fol. 1122] churches, schools, community halls. And I am proud of that town down there! I think it is one of the best manufacturing small towns in the southern States, or the northern States. I don't want to see that destroyed. I

don't want to see that destroyed when there is nothing offered in exchange and nobody who is going to be benefited by changing these rates. I can't imagine what it is all about! (Rec. p. 837.)

Another qualified and experienced lumber manufacturer in Florida, having many years of actual, practical, daily contact with the facts as to timber supply in north Florida, was witness M. L. Fleishel, President of the Putnam Lumber Company—a large concern (Rec. 580). As to the availability of timber in north Florida he testified as follows:

Question. Mr. Fleishel, based upon your own knowledge can you say whether or not there are available for sale to, or purchase by, Georgia operators any merchantable tracts of timber, within 150 miles of the Georgia boundary-line—the Georgia-Florida boundary line?

Answer. Well, if you mean by "merchantable tract of timber" anything more than for a little ground saw mill, I would say absolutely no.

Question. That is what I mean. What size timber tracts would you include in "merchantable" there?

Answer. Anything from six or seven million feet, up.

Question. Mr. Fleishel, will you tell me upon what you base that statement, that there are no merchantable tracts available?

Answer. Well, I think I have been over practically every county in north Florida in the fourteen years I have been here; I did nothing else for the first few years I was here, looking at the timber with a bunch of timber cruisers, looking for first class timber.

[fol. 1123] Question. There is merchantable timber within 150 miles of the Georgia line, is there not?

Answer. Yes, sir.

Question. Why is it not available for sale to, or purchasable by, Georgia mill operators?

Answer. Because it is already owned by these saw mill operators who have big investments in saw mill properties before (Rec. pp. 596-597).

In particular regard to the unavailability of any supply of cypress, Mr. F. H. Wilson, of Palatka, Florida, general manager of the Wilson Cypress Company, testified. Hav-

ing lived and been engaged in the lumber business in Florida since 1891, his qualifications are obvious (Rec. p. 505). As to the complete absence of any such supply of cypress in northern Florida his testimony was as follows:

Q. Do you know of any possible circumstances which now exist or which you can anticipate will exist in the lumber business that would cause or enable substantial shipments or movement of logs from Florida into Georgia?

A. I do not, no sir.

Q. In order that you may give your reasons or the basis for that statement, I will ask you what effect, if any, the supply of commercial timber in Florida has upon the movement or possible movement of logs from Florida into Georgia.

A. To begin with, under present conditions, the supplies of commercial timber in Florida are owned and being developed, by existing lumber companies which have long since established costly mills in Florida, the capacities of which are adjusted to the quantity of timber owned. Therefore, if there were to be capitalists in Georgia having available to them resources for the acquisition of commercial timber supplies in Florida they would be compelled to purchase from one or the other of the large companies now doing business in Florida, and, of course, that would mean purchasing the mills and all the equipment as well as the [fol. 1124] timber itself. That being done it seems impossible to suppose that such a purchaser would dismantle or dispose of the Florida mill which he had already bought, and then construct a new one in Georgia. (Rec. pp. 522-523.)

Q. Mr. Wilson, from your experience as a lumber man, will you state whether there is any body of cypress timber in the northern part of Florida not owned by the Florida cypress mill operators, that could, in your opinion, be logged profitably to any mill, wherever situated?

A. I do not know of any such body, no sir. I should say that practically all of the cypress timber in north Florida is now owned by the present operators operating in Florida; and the remaining part, if there is a small percent of such timber, it is so scattered and inaccessible, and in such small tracts, that the logging of it, even on the Cummer scale, would be practically impossible (Rec. p. 529).

Still another experienced and well qualified man—Mr. J. S. Foley, Vice President of the Brooks-Scanlon Corporation—testified to the same effect (Rec. p. 727), as follows:

Q. Are there any circumstances which now exist, or which, so far as you can judge, will exist, that will cause or enable substantial shipments or movements of logs from Florida to Georgia?

A. No, sir.

Q. Now, why do you make that statement?

A. The supply of commercial stands of timber in Florida are owned and manufactured by lumber companies who have long since built and are operating mills of large capacity in Florida, and are balanced with the amount of timber owned. There is no available timber in any commercial quantity that could be acquired. It would be necessary to purchase the timber from one of those now operating, which would necessarily mean the purchase of the mills [fol. 1125] along with the timber. It would seem improbable that such a purchaser would dismantle or dispose of a mill in Florida which he had already bought, and build a new one at some other location in Georgia (Rec. p. 736).

Such is the state of the record on the unavailability of timber in Florida. When thus presented in the very terms used by the witnesses the evidence proves conclusively that the Division's assumption concerning future interstate movement is in error.

Not only is there no interstate commerce in logs today over the Coast Line from Florida to Georgia; but there will never be any, regardless of freight rates, because there is no timber available for such purpose!

The situation presented by this record is not at all like that involved in the Lum case, 21 I. C. C. 558, the Suffern Grain Case, 22 I. C. C. 178, the Flour City S. S. Case, 24 I. C. C. 179, or the Southern Agricultural Case, 109 I. C. C. 275. In each of such cases the record showed the existence and ownership of a source of supply by the complaining shipper, or, as in the Suffern Grain and the Flour City cases, the proof convinced the Commission that the proposed commercial venture rested upon sound consideration of economics and would meet an established need for elevator and steamship facilities.

Here, however, no such situation is remotely involved. There is no present interstate commerce in logs over the Coast Line from Florida to Georgia; no witness for complaint owns any supply of logs in Florida or ever has shipped any from the one state to the other; no such witness would or could identify the location, kind or size of any tract in Florida thought by him to be available in commercial quantities. As opposed to the casual and unsup- [fol. 1126] ported evidence of Georgia shippers the intervening Florida shippers demonstrated beyond any question of reasonable doubt that there is no available source of timber supply in northern Florida for future shipment to Georgia.

The finding of Division 4 in this particular is a vital error.

In prescribing a basis of maximum reasonable rates from north Florida to Georgia and between Florida points, the Division, apparently, did so under the assumption that there would be a movement in the future. There is no substantial or marked disparity between the scale prescribed by Division 4 from Florida to Georgia and the present interstate scale. The Division has overlooked the fact that the scale prescribed for Florida logs within Florida and from Florida to Georgia is higher than the Georgia intrastate log scale.

The record is convincing that no logs would move from Florida to Georgia under a scale approximating the scale prescribed by Division 4. The following testimony of one of the Georgia witnesses epitomizes the situation in this respect. Mr. Simmons testified as follows:

Question. By Mr. Cotterill: Mr. Simmons, will you answer yes or no to this question: Do you, or do you not ship any logs over the Atlantic Coast Line Railroad from the state of Florida to Bainbridge, Ga.?

Answer. No, I cannot.

Question. I am asking you, do you?

Answer. No.

Question. If the rates on logs within Florida were to be advanced and made as high as the rates on logs from Florida to Georgia, charged by the Atlantic Coast Line R. R. would you be in any better or different position than you are now?

[fol. 1127] Answer. And I had to get my timber supply from that source?

Question. You can answer the question, sir, any way you wish.

Answer. Well, if I had to get my timber supply from that source, I would just quit business, and get out.

Question. In other words, sir, if the rates were to be advanced within Florida to the level of the now existing rates from Florida to Georgia, you would not be aided in any way, whatsoever, would you?

Answer. Not if I had to get my supply of logs that way,—I couldn't navigate,—I couldn't go ahead.

Question. And there would be no movement from Florida to Georgia on such rates?

Answer. I don't think so.

Admissions of the complainant's own witnesses conclusively establishes that the existing difference in the level of the Intrastate rate and the Interstate rate in no wise accounts for the complete absence of Interstate movement from Florida to Georgia. This is true, even if we assume for the sake of argument, that there might be available timber in merchantable quantities.

Every Georgia mill witness produced by the complainant admitted in terms that such such was the fact except one witness, Dr. Giddens.

Examination of Dr. Giddens' testimony not only establishes that this physician's testimony is not competent, but is merely an hostile expression of opinion which he failed to support on direct examination and which, upon cross-examination, was demonstrated to be without any basis in fact. Not a single fact was adduced by the complainant or by anyone at any of the hearings to prove in any way [fol. 1128] that the raising of the Intrastate rate would cause a single log to move from Florida to Georgia.

And so we say that upon the complainant's own evidence (without recourse to the defendants' evidence) the meagre case of the complainant under Section 3 was competely shattered.

The principle of law is clearly established that a mere difference of level between the Interstate rate and Intrastate rate does not confer upon the Interstate Commerce

Commission jurisdiction to increase or otherwise interfere with the Intrastate rate. Interference by the Commission under such circumstances has repeatedly been held to be beyond the jurisdiction, power and authority of the Commission. See American Express Co. v. So. Dak., 244 U. S. 617; Houston etc. Ry. Co. v. U. S. 234 U. S. 342; Illinois Cent. R. R. Co. v. State Commission, 245 U. S. 493; Wisconsin Rate Case, 257 U. S. 493.

Furthermore, the witnesses of the intervening defendants overwhelmingly established the fact that there would be no movement of logs interstate even if merchantable tracts of timber were available in North Florida for shipment into Georgia. The witnesses of the intervening defendants referred to were Crockett, record p. 790; Cummer, record p. 440; Wilson, record p. 505; Scanlon, record p. 820; Foley, record p. 728, and Fleishel, record p. 580.

It is unnecessary here to quote in detail from the testimony of those witnesses. Their testimony at the Jacksonville hearing consumed several days. All of those witnesses had been engaged in the lumber business in Florida for many years. Their testimony carries with it the conviction that comes only from veracity and expert knowledge. We maintain that their testimony conclusively proves not [fol. 1129] only that the level of the Intrastate rates has no bearing upon any potential Interstate traffic but also that even at a materially reduced Interstate rate there would be no movement of logs from Florida to Georgia. And this they demonstrated convincingly for reasons in addition to the fact that there was nc available timber in North Florida in merchantable tracts which could be acquired by any Georgia shipper.

Executives of the intervening defendants all testified that the location of their own mills in Florida, so far away from the supply of timber, has now become an economic disadvantage. They testified that were it not for the enormous cost which would be involved they would unquestionably rebuild their plants at the source of supply.

The emphatic testimony of all the executives of the Florida interveners was that should the Florida intrastate log rates from the forests to the existing mills be increased then, they would be forced to close down their mills, dis-

mantle them completely, and abandon the existing mill towns, stores, churches, schools, etc.

It is that spectacle of disaster which we are faced with under this order of Division 4 without any real or substantial showing of probable gain to the interstate commerce from any point of view. No Georgia interests would be benefited; the Atlantic Coast Line Railroad would completely lose its existing large tonnage of logs over divisions of its line which are now sustained and operated chiefly for and by such traffic; and the Florida interveners would suffer exceptionally large losses.

The testimony of all of the witnesses leaves the very distinct idea that the difference between state and interstate [fol. 1130] rates is not affecting them in any way and that if the Florida intrastate rates are increased "it would not help a bit," as testified by Mr. Jackson.

The fact that there are no Georgia shippers in competition with Florida shippers in this particular traffic, the fact that no Georgia mills seriously contemplate buying or shipping logs from Florida to Georgia, the fact that no timber is available for transportation from Florida to Georgia, and the fact that it is commercially impracticable to ship logs from Florida to Georgia, leaves no fundamental grounds for the finding of undue prejudice against Georgia shippers which Division 4 has made.

The findings should be set aside.

III.—Division 4's Finding of Unjust Discrimination Against Interstate Commerce is Without Legal Foundation and is Unsupported by Any Evidence Whatsoever

1. Complainant's Position, as Defined by it, Relates Solely to the Issue of Prejudice Against Georgia Shippers. Therefore it was Error in Law to Make Any Finding of Unjust Discrimination in This Proceeding

The complainant did not directly attack the level of the Florida intrastate rates, except in their relation to the interstate rates. While section 13 of the Act was referred to in the original printed complaint the Georgia Public Service Commission brought the case and dealt with it throughout solely from the standpoint of alleged undue prejudice to

the Georgia lumber manufacturers and communities in which they do business.

That such was the real attitude of the complainant was made quite apparent from its position on the record. No witness for the complainant remotely endeavored to prove [fol. 1131] that the Florida rates are "less than reasonably compensatory" or that, as a consequence, "interstate commerce" as a whole is subjected to "discrimination." On the contrary, the complainant, through its rate expert, Mr. Price, sought throughout the hearing to make such a record as in its judgment would warrant a finding that the higher interstate rates are unreasonable in violation of Section one.

No witness for the complainant attempted in any manner whatsoever to show any unjust discrimination against interstate commerce.

The complainant defined its own position and in substance restricted its own complaint to the allegation of undue prejudice against individual shippers together with the allegation that the higher interstate rates are unreasonable under Section one of the Act. The complainant did not tender to the Commission any issues as to the compensatory nature of the Florida intrastate rates. Petitioners assert that the record does not show any evidence whatsoever which lays any foundation for the finding of unjust discrimination. Nowhere in its brief does complainant ask the commission to make a finding of unjust discrimination against interstate commerce as such.

2. Burden of Proof on Complainant to Prove Unjust Discrimination Against Interstate Commerce

Division 4 has apparently overlooked the fact that the burden of proof was upon complainant in this case to prove unjust discrimination against interstate commerce if it desired a finding under that allegation. The fact that complainant offered no testimony whatsoever upon this issue warrants the Commission in treating that allegation as [fol. 1132] having been abandoned. The fact that the Division has made a finding under that very allegation without any proof whatsoever in support thereof by complainant renders the finding illegal.

3. Purpose of Defendant's Cost Studies Was Misunderstood, Apparently, by Division 4

The Atlantic Coast Line Railroad Company, on its own initiative, proffered a cost study pertaining to the handling of logs under typical circumstances. Division 4 appears to have entirely missed the point of this evidence. The Atlantic Coast Line Railroad is not a complainant against its own rates on logs in Florida. No case has been brought by such carrier for the purpose of relieving it of its own Florida log rates. On the contrary the Atlantic Coast Line Railroad is a defendant in the case and definitely stated, and adhered throughout to, the position that it was not endeavoring to increase, or procure authority to increase its state rates.

The complainant made no attempt to present a case of discrimination against interstate commerce under that part of Section 13 here discussed, and the cost study of the Atlantic Coast Line Railroad did not go to that question. Defendant having denied in its answer any violation of law, having taken the position that it wished to continue the Florida log rates, and having submitted cost evidence to justify and support its position in respect to continuance of the Florida rates, the cost study should not be construed by the Commission as reviving the issue of unjust discrimination against interstate commerce after complainant had, in substance, abandoned that issue.

Plainly, the introduction of such cost calculations as well as other evidence of the Atlantic Coast Line was for an entirely different purpose.

[fol. 1133] Under the allegations of undue prejudice against Georgia lumber manufacturers the Atlantic Coast Line only dealt with the "reasonableness" of both the intrastate and interstate log rates involved. It defended its interstate rates against material reductions and it also defended the continuance of its intrastate rates. It appears, however, that Division 4 erroneously supposed that such cost calculations and other evidence of the Atlantic Coast Line bore upon an issue of "discrimination against interstate commerce." Indulging such erroneous assumption,

Division 4 concluded that the "Florida rates assailed * * * are not reasonably compensatory" and entered an order in terms undertaking to compel very material increases in intrastate rates. Thus Division 4 has erroneously treated the case as not being limited to an issue of undue prejudice against particular shippers and localities in Georgia, but as involving the necessity of considering whether or not the Florida state rates assailed are "reasonably compensatory." The Division has assumed that a finding to the contrary was a complete and self-sufficient foundation for its finding of unjust discrimination against interstate commerce.

The Railroad Commission undertook to revise certain material aspects of the cost calculations which were submitted by the Atlantic Coast Line, employing the railroad data. In doing so the Florida Railroad Commission did not attempt to and could not have revived the issue of unjust discrimination.

Upon this analysis of the situation, therefore it must be evident that Division 4 has erred in the assumption that this case involves more than an inquiry as to whether "undue prejudice and disadvantage" against Georgia shippers and localities exists. It appears to have assumed that the case [fol. 1134] involved the necessity and propriety of determining whether the Florida state rates were reasonably compensatory; and it further assumed erroneously that a finding in the negative sufficed to support an order under Section 13 compelling a material increase in such state rates. Apparently Division 4 has completely overlooked or ignored the fact that, if the complainant had desired to press the issue of unjust discrimination (which complainant did not do), the burden of proof was upon complainant to show that the Florida rates were not reasonably compensatory. Complainant offered not one shred of evidence, and made no attempt whatsoever, to prove that the Florida rates were not reasonably compensatory. Division 4 has inadvertently assumed, in error, that the burden of proof was upon the defendant.

These cost studies show that defendant is warranted in continuing the Florida intrastate rates from northern Florida points to Florida mills in view of the enormous amount of revenue which it receives from this particular traffic.

The cost evidence further serves to justify the defendant in carrying a different level of rates from Florida to Georgia points, where no movement can exist, than from north Florida timber tracts to north Florida mills, where the movement is enormous. This evidence, and the revision thereof, offered by the Florida Commission's experts, stand unchallenged upon this record. The finding of Division 4 that the Florida rates are less than reasonably compensatory is therefore without any evidence whatsoever to support it.

The Division's finding of unjust discrimination against interstate commerce is therefore illegal.

[fol. 1135] 4. The Division's Order Would Destroy Intrastate Traffic

Based upon undisputed and unchallenged evidence, the following correct finding appears in Division 4's report:

"Witnesses for the Florida interveners testified that any material increase in the Florida intrastate rates would either cause them to move their plants to the timber or abandon operations, in either of which events defendant would lose considerable traffic."

Despite such uncontradicted testimony, and despite its apparent acceptance by Division 4 as establishing a conclusion, the legal significance thereof appears to have been overlooked. It seems to have been supposed by the members of Division 4 that Section 13 of the Act empowers it to compel a material increase in state rates, although the evidence conclusively shows that the particular intrastate traffic to which such rates apply would immediately thereafter cease to exist.

It is virtually self-evident that the unjust discrimination clause of Section 13 does not contemplate that this be done. If it were to be thought that the present case involves inquiry of that nature under Section 13 the proof conclusively establishes that no interstate commerce would be created, and no revenue gain to the Atlantic Coast Line would ensue by reason of an increase in the Florida state rates. Hence from the standpoint of such provision of law it cannot be held in this case that there exists any permissible basis

under Section 13 for an increase in the state charges. Exercising its managerial function, the Atlantic Coast Line perfers to continue such rates in effect and makes no com- [fol. 1136] plaint to this Commission in regard thereto. Since an increase in the Florida rates would kill the intrastate traffic to which such rates apply, no possible gain to the Coast Line could ensue, and therefore for this additional reason, the Commission is without power to make such an order.

Conclusion

The Georgia Public Service Commission has proclaimed publicly and in this record that to bring about rates from Florida to Georgia substantially the same in amount as the prevailing "Cummer scale" in Florida is the object of this proceeding.

It has however, prosecuted the case against the objection of and over the protest of all but a few lumber mills in the state of Georgia. It has set forth in this record that inspiration for the case came to it when complaint was made against the proposal of the Georgia Commission to materially advance its own intrastate rates on logs in Georgia. According to Witness Price, such complaint from Georgia manufacturers was based upon a comparison between the proposed increased rates on logs within Georgia and the prevailing intrastate rates in Florida. Therefore, it was conceived that the case should be brought in order to reduce the interstate rates from Florida to Georgia on the supposition that by doing so some gain to Georgia lumber manufacturers would ensue.

But the substantial absence of any support of the complaint was demonstrated by the fact that when the case began the Georgia Public Service Commission did not have [fol. 1137] available to it one single Georgia lumber interest to testify for it as a witness. When the case was first submitted merely upon evidence of Witness Price, consisting of a comparison of the interstate and state rates involved, it was about to be closed without any testimony from any other Georgia interests whatsoever. Then, on their own account, when two men from Georgia asked permission of the Examiner to testify in their own behalf, counsel for the complainant introduced them without even

claiming them as witnesses for the Georgia Public Service Commission.

It was not until after intervening shipper defendants recorded and were respectfully insisting upon the privilege of argument in support of their motion to dismiss that counsel for the Georgia Public Service Commission appeared to realize the complete legal insufficiency of the case. He thereafter sought leave to and succeeded in submitting further direct evidence at an additional hearing. At Jacksonville the testimony of three other witnesses was given in its behalf. Their testimony wholly fails to support any of the allegations of the complaint.

Such is the case. As expressed by Mr. Scanlon: "What is it all about?" Who would gain, and in what way, by such a ruthless destruction of large investments in Florida which are furnishing opportunities of employment to thousands of persons whose homes are at stake as well!

Petitioners therefore pray that the order of Division 4 in this case be vacated and set aside, that an order be entered assigning this case for re-argument and reconsideration and that when such re-argument and re-consideration shall have been had the Commission make and enter an [fols. 1138 & 1139] order dismissing the case in so far as the issues of undue prejudice and discrimination are concerned.

Respectfully submitted.

Brooks-Scanlon Corporation, by Geo. L. Rutherford, Attorney. Putnam Lumber Company, by H. P. Adair, Attorney. Wilson Cypress Company, by H. P. Osborne, Attorney. Cummer Lumber Company, Cummer Cypress Company, by E. W. Mitchell, Attorney. Jacksonville Traffic Bureau, Inc., by J. O. Cassidy, Attorney. Southeastern Forest Products Association, Successors to Georgia- Florida Saw Mill Association, by J. S. Farish, Traffic Manager. Southern Cypress Mfgrs. Asso., T. M. True, Traffic Manager. Southern Pine Association, by A. G. T. Moore, Traffic Manager. Chas. E. Cotterill, of Counsel.

Dated at Jacksonville, Fla., September 26, 1928.

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[fol. 1142] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION FOR REARGUMENT AND RECONSIDERATION ON BEHALF OF RAILROAD COMMISSION, STATE OF FLORIDA

To the Interstate Commerce Commission, Washington, D. C.

General Statement

This Petition is filed on behalf of the Railroad Commission, State of Florida, and the people of the State of Florida.

This case was brought by the Georgia Public Service Commission, and not by any shipper or user of logs in Georgia; hearings were held; briefs were filed; and a proposed report, by Examiner R. M. Brown, was served upon the parties.

The Examiner recommended that the Interstate rates on logs from points in the northern fringe of Florida, over [fol. 1143] the Atlantic Coast Line Railroad to local points in Georgia, for distances up to 170 miles should be those voluntarily proposed by the sole defendant. No exceptions were taken to that proposed finding on the part of any Florida interests, or any Georgia mills.

(1). The Examiner also recommended that the Commission find that "the Florida intrastate rates assailed have not been shown to cause undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, or undue, unreasonable, or unjust discrimination against interstate commerce."

No exceptions thereto were filed by any Georgia shippers or mills.

The Examiner's conclusions were satisfactory to the Florida interests, and were supported by the facts.

Argument was heard before Commissioners Eastman and Woodlock, sitting as Division 4 of the Commission.

(2). A decision, rendered by Division 4, Commissioners Meyer, Eastman and Woodlock, was served upon us about the middle of August, 1928. In this decision the Division has adopted the Examiner's recommendation with respect

to defendant's voluntary scale of interstate rates to be applied in the future from points in the northern fringe of Florida to Georgia mills over the Atlantic Coast Line, but has reversed the Examiner's conclusions with respect to the issue of undue prejudice and unjust discrimination.

(3) In this petition the Railroad Commission, State of Florida, and the State of Florida, pray, that the Commission reconsider this case and revoke the order of Division— with respect to the findings of fact and conclusions which [fol. 1144] differ from these found and recommended by the Examiner under the issues of undue prejudice and unjust discrimination.

II. General Grounds of Petition

The general grounds of this Prayer for Reconsideration are as follows:

(1) That the Division's report contains vital errors of fact and states certain assumptions of fact, which in some respects are directly contrary to the evidence and in others are wholly unsupported by evidence.

(2) That the Division's report states conclusions with respect to the allegations of undue prejudice which are contrary to the evidence, and with respect to the allegations of unjust discrimination which are wholly unsupported by any evidence, and all of which are without legal foundation.

(3) That the order of Division 4, would not benefit any interstate shipper, but would subject Florida shippers to irreparable injury; and would not aid, enlarge or develop interstate commerce, but would destroy intrastate commerce.

(4) That the order of Division 4, is an unwarranted and unnecessary attempt to exercise general regulatory federal power over traffic which is subject to the laws and regulations of the State of Florida.

(5) In order that consideration may be given to the facts and arguments to be offered in support of the general grounds of this Prayer for Review, Petitioners ask that an order be entered in this proceeding, revoking the order of

Division 4, insofar as it affects Florida intrastate rates, and re-opening the case in order that re-argument may be had before the entire Commission, and in order that there- [fol. 1145] after the entire Commission may Reconsider the evidence with respect to the issues of undue prejudice and unjust discrimination.

Petitioners do not ask that the order of Division 4, insofar as it prescribes rates from points in the northern fringe of Florida over the Atlantic Coast Line to points in Georgia, be stayed or deferred. Petitioners are not opposing reductions in interstate rates on logs from points in North Florida to Georgia.

III. Errors of Fact

1. Georgia Mills Oppose the Complaint

Near the middle of sheet 2 of the report of Division 4 is the statement that:

"At the hearing the Florida Railroad Commission and the Florida interveners moved that the complaint be dismissed." etc.

This statement is incorrect. The following correct statement is found on sheet 3 of the Examiner's proposed report:

"During the course of the hearing the Florida interveners, the Florida Commission, and others interested in maintaining the present level of the Florida rates, moved that the compalint be dismissed." etc.

Attention is directed to the fact that the motion for dismissal was concurred in and made on behalf of the Georgia-Florida Saw Mill Association, Southern Pine Association and the Southern Cypress Manufacturers Association. Included among these are many, and practically all of the pine and cypress mill owners in Southern Georgia. Evidently Division 4 has overlooked the fact that the complaint [fol. 1146] does not name a single Georgia mill operator on whose behalf the complaint was filed. The fact that practically all of the Georgia mills joined in the motion to dismiss this case is entitled to great evidentiary weight. It

clearly indicates the utter lack of any actual or potential competition, which would be necessary to support the allegations of undue prejudice and unjust discrimination. The fact that practically all of these Georgia mills actually came forward and opposed the complaint, which ostensibly had been brought on their behalf, is significant, striking and unusual. The fact that the Georgia Commission brought this complaint, without bringing to the original hearing, a single Georgia mill owner as a witness in behalf of the complaint, and the fact that the Georgia Commission closed its case in chief at the original hearing without offering a single solitary log shipper as a witness, (other than its rate expert,) to testify concerning alleged competition and undue prejudice, apparently have been overlooked by Division 4. These facts constitute a prima facie case of the absence of competition and the absence of any real or substantial prejudice or discrimination.

The fact, that the motion to dismiss was denied, is not important at this time, but the fact that practically all of the Georgia mills opposed the complaint and sought to have it dismissed for lack of evidence, should receive careful consideration by the Interstate Commerce Commission before it proceeds under these unusual circumstances, to exercise jurisdiction over Florida intrastate commerce.

2. History of Florida Rates is Distorted

On sheet 3 of the Division's report is the following erroneous statement of fact:

"That (Florida) Commission refused to permit the pro- [fol. 1147] posed (Florida intrastate A. C. L.) rates to become effective because they were published to apply only on train loads and were not available to all shippers. It further advised defendant that the rates themselves were too low and such as might be deemed confiscatory."

The facts in regard to the Florida Commission's action were correctly stated on sheet 4 of the Examiner's proposed report as follows.

"That Commission refused to permit the proposed rates to become effective, as they were applicable only when the

movement was in trainloads, and were not available to all Florida intrastate log shippers. To meet these objections defendant published rates on the Cummer scale basis, effective October 30th, 1914." etc.

The report of Division 4 in changing this language of the Examiner's report, apparently ignored entirely the full discussion of this subject which appears in our brief on pages 2, 3, 4 and 5. We directed attention to the fact that the Florida Commission did not find or advise defendant "that the rates themselves were too low and such as might be deemed confiscatory." We now direct attention again to the concluding sentence on this point at page 5 of our brief, which is as follows:

"But this Commission (Florida) does unqualifiedly take the position that these rates as applied in Florida, and over which it has jurisdiction, have its full approval."

Unfair attempts to distort the history of the Florida A. C. L. log rates were made in this proceeding, and these attempts have apparently given Division 4 an erroneous conception of the facts. We ask that the Interstate Commerce [fol 1148] Commission give due consideration to the true statement of facts which appears in the Examiner's report. The Florida Commission's position, as stated in our Brief, is based upon the fact that the predominant movement of logs, intrastate, over the Coast Line in the northern fringe of Florida is in trainloads, which fact results in unusually low costs of transportation.

3. Division 4 Misunderstood Defendant's Position

On sheet 3 of the Division's report, the following statement is made:

"Defendant does not consider the intrastate rates reasonably compensatory." etc.

The following statement of defendant's position will be found on page 4 of their brief and in a statement of Defendant's chief Counsel, Mr. C. H. Davis, at page 903, as follows:

"While our testimony has been directed towards showing that these rates (Florida intrastate) are relatively low and in and of themselves low, we have not made and are not making any proposal to revise them. We have undertaken to justify the original establishment of these rates for trainload movements," etc.

Regardless of any extemporaneous statements which may have been made at oral argument (a copy of which is not available to us at this time) there can be no doubt that this quotation from the record is the correct statement of defendant's position.

4. Defendant Justified its Intrastate Rates

We direct attention to the fact that defendant states these rates are "relatively low," and that Defendant has "under-[fol. 1149] taken to justify" these Florida rates for trainload movements. The predominant movement in the northern fringe of Florida is in trainloads. Defendant's cost figures, and the revision thereof as made by the Florida Commission's experts, fully support defendant's justification of the Florida rates under consideration as being compensatory. Division 4 has brushed aside the evidence of defendant and the Florida Commission's experts, and has overruled the express finding in the Examiner's proposed report, that:

"Careful consideration of these studies, however, warrants the conclusion that the revenue received by defendant from its Florida intrastate log traffic, while relatively low, is reasonably compensatory."

Attention is directed to the fact that the Examiner's findings agree with defendant's contention that the rates are "relatively low," and that the rates are justified as reasonably compensatory for the traffic in question (which is usually in trainloads) in the northern fringe of Florida.

5. Division 4 Errs in Overruling Examiner's Finding That Florida Intrastate Rates are Reasonably Compensatory

The findings of Division 4, that the Florida rates in issue are "less than reasonably compensatory" (sheet 6) is un-

supported by any evidence offered by any complainant whatsoever, and directly contrary to the justification offered by defendants and the supporting evidence offered by the experts of the Flor-da Commission. The Examiner's finding in this respect should be affirmed by the Commission, and the finding of Division 4 should be reversed.

[fol. 1150] On Sheet 6 of the Division's report the statement is made that:

"It is manifest, we believe, that the intrastate rates assailed are less than reasonably compensatory." This finding is directly contrary to the Examiner's finding that the rates assailed are "reasonably compensatory."

Apparently the Division, in reversing the Examiner upon this important point, was influenced by the erroneous findings hereinbefore discussed, including the error concerning the Florida Commission's attitude towards the Florida rates, and the misunderstanding concerning the position of the defendant Atlantic Coast Line. Another factor, which apparently influenced the Division 4 in this reversal of the Examiner's express finding is found in the treatment in the Division's report of the evidence of the costs of transportation offered by Defendant and the revision thereof as made by the Florida Commission's experts.

6. Cost Evidence of Florida Commission Condemned Unwarrantedly by Division 4

Defendant offered in evidence special cost studies of this traffic, based upon representative hauls and representative volume of traffic. No one assailed the accuracy of the defendant's cost studies as being too low. The Florida Commission's experts on the other hand did undertake to show that, taking defendant's own studies and figures, it could well afford to transport logs from the northern fringe of Florida to Jacksonville in trainloads at the present rates and still leave a god margin to spare, over and above the expenses of this service. Florida shippers proved that the vast preponderance of the North Florida movement is in [fol. 1151] trainloads. Complainant has not even attempted to assail the revised cost figures of the A. C. L. study which the Florida Commission's experts offered in evidence. In

discussing this evidence the report of Division 4 states, on sheet 5, that:

"Neither (the A. C. L.'s figures, and the Florida Commission's revision thereof) can be accepted to show the approximate actual cost of transporting logs in single carloads intrastate throughout Florida."

The Division's ground for this finding is that:

"Both cost studies are based on certain arbitrary assumptions and both are based on movements in trainloads from two points of origin to one destination."

What is wrong with these revised cost studies? All cost studies must rest upon certain arbitrary allocations. What is wrong with the taking of these two points of origin and one destination? Has any one questioned the fact that these two points of origin and one destination are not only representative but also are fairly typical of the vast preponderance of the actual movement from the northern fringe of Florida to the principal consuming mills in north Florida? What other representative point of origin and destination would serve to convey so fair an average picture of the actual condition as these?

With respect to the Division's statement that neither of these cost studies "can be accepted to show the approximate actual cost of transporting logs in single carloads intrastate throughout Florida" we direct attention to the fact that the cost studies were not offered for this purpose. The evidence in this case was confined to the northern fringe of Florida, in accord with the issues of this case, as defined and [fol. 1152] restricted at the hearings. Apparently the Division assumed in error that it was incumbent upon defendant and the Florida Commission to base their studies on movements of logs throughout the state. The Division has overlooked the fact that the evidence deals with only a small part of the State of Florida where the log traffic on the A. C. L. is far greater than "throughout the State" as a whole, and is almost entirely in trainloads.

Rates on logs which might be just and reasonable for general application throughout the State would be unreasonably high between points of actual movement in the

northern fringe of Florida where the log traffic density is so unusually and remarkably great.

7. New Cost Studies Would Have Been Appropriate

If the Commission was not satisfied with the cost studies of defendant or the revised figures of the Florida Commission's experts, it could have informed us of a method of ascertaining the costs of the transportation under consideration which would have been satisfactory to it, instead of discrediting our accounting evidence in this summary manner.

8. Transportation Services, Intrastate, Differ from Interstate

On sheet 7 of the report of Division 4 the finding of fact is made that the:

"transportation services in each instance (under the scale of rates prescribed by Division 4 for interstate and intrastate application) are performed by defendant under substantially similar circumstances and conditions."

[fol. 1153] In making this finding the Division apparently has in mind the general conditions in Georgia and Florida relating to all traffic as a whole over all lines. Apparently the Division has overlooked the following facts: That, this case brings in question only the rates on logs in the northern fringe of Florida; that the intrastate movement between points in the northern fringe of Florida is enormous, and has been for years; that the movement to one mill alone exceeded 128,000 carloads; that the predominating ordinary and usual movement from the timber in the northern fringe of Florida to Jacksonville is so great that it consists of entire trainloads of logs; that the cost of transporting each carload are thereby reduced to an unusually low figure; and that, on the other hand, there is no interstate movement from North-Florida to Georgia. For commercial reasons of supply, demand, cost of manufacture, lack of purchasable timber, and longer hauls from the same timber tracts to Georgia mills, there is no practicable possibility of there being any interstate movement from the northern fringe of Florida to Georgia mills.

The Division apparently has overlooked the fact that it is no longer feasible or practicable to ship logs for distances as great as those from points such as Gainesville, Fla., to Valdosta, Ga., regardless of the relationship of rates, for the reason stated in the Division's report, that the "successful exploitation (of small timber tracts) because of their limited extent, could only be accomplished by the use of portable mills operating in close proximity to the standing timber." If the prescribed rates go into effect, there will be neither interstate nor intrastate movement thereunder. This fact is clearly proven and will be discussed later.

[fol. 1154] 9. Enormous Volume of Movement Warrants Low Commodity Rates

As we understand the decisions of the Interstate Commerce Commission that body has always given due regard to the lessened costs of transportation in inverse proportion to the volume of the movement and has consistently adhered to the rate-making principal that it is the greater volume of movement which warrants the establishment of commodity rates between certain points, where the traffic is heavy, and the application of class rates where the traffic is light, sporadic or occasional. In other words, volume of movement has always been one of the vital points to be considered in deciding whether transportation conditions are substantially similar or not. Why has Division 4 failed to give consideration to the most striking feature of this case, namely, the difference in transportation conditions due to the enormous movement of logs over defendant's line to Jacksonville, intrastate, and the total absence of actual or potential interstate movement from the same Florida points on defendant's line in Florida to any Georgia mills?

This extreme divergence in transportation conditions in Northern-Florida-log-traffic, as compared with interstate-north-Florida-to-Georgia traffic, warranted a wide difference between the intrastate rates to Florida mills and the interstate rates to Georgia bills. The difference in volume of movement, actual and potential, is so great that defendant would be warranted in applying the class rates on any sporadic interstate shipment of logs which might happen to

move from Florida points over the A. C. L. to any Georgia mill.

[fol. 1155] IV. Erroneous Assumptions of Fact

1. No Actual or Potential Movement to Georgia

On sheet 5 of Division's report are statements which indicate clearly that the Division has misunderstood the evidence and has entertained certain assumptions which are not in accordance with the proven facts.

"No movement from Florida to Georgia is shown and complainant states that there can be none because of the substantially higher level of the rates interstate than intrastate."

The Examiner's report correctly stated, on sheet 7, that:

"No movement under the interstate rates was shown and complainant admits that there is none."

Attention is directed to the fact that the Examiner correctly stated that no interstate movement was shown and complainant admists that there is none. In other words, his findings make it clear that this complaint deals with so-called paper rates and paper prejudice so far as the interstate rates and Georgia mills are concerned.

It is clear that the Division has drawn an erroneous assumption from the testimony of the Georgia Commission's rate expert, Mr. Price. On page 16 of the record Mr. Price was questioned about the movement of logs interstate from Florida to Georgia, and he testified:

"No, I do not know, of my own knowledge, but from the investigations I have made I do not think it possible for there to be any extensive movement."

Now, Division 4 has assumed that he meant that if the rates within Florida were increased to the interstate level [fol. 1156] that there would be an interstate movement. This assumption is clearly in error. Mr. Price's testimony very fairly and frankly shows that he has made no investigation whatsoever as to the actual movement, existing or portential. He frankly states that his investigations

consisted of making exhibits of comparisons of rates for this case (page 16 of the record). The correct assumption from this evidence which is borne out in other parts of the record, is that the Georgia Commission, in bringing this complaint made no investigation whatsoever to determine whether there could be any interstate movement under any scale of maximum reasonable rates from the northern fringe of Florida to south Georgia. If the Georgia Commission had made such an investigation we feel satisfied that this complaint would never have been brought because the uncontroverted testimony of many other competent witnesses in this case shows conclusively that there is no actual movement and that there could not be any potential movement.

2. Lack of Purchase Timber Precludes Potential Movement

The lack of available timber adjacent to the Atlantic Coast Line in north Florida which could be purchased by Georgia, or any other mills, and the inability of any mill to pay the transportation charges on logs for a haul as long as from such points as Gainesville, Fla., to Valdosta, Ga., for example, and operate at a profit, precludes the possibility of any actual movement under the present rates or any potential movement under the so-called Alabama scale prescribed by Division 4.

These facts, which are conclusively shown of record, illus- [fol. 1157] trate forcibly the error in the assumption by Division 4 that the lack of movement is due to the "higher level of the rates interstate than intrastate".

The Examiner's report, sheet 8, correctly states that:

"All but one (of the Georgia shippers) admitted that an increase in the Florida rates would not benefit them, and that it would not be feasible to ship logs from Florida to Georgia under defendant's present interstate rates.

In regard to the available supply of timber adjacent to the Atlantic Coast Line for shipment from Florida to Georgia mills, the Examiner's report stated, on sheet 8 that:

"They (Georgia witnesses) stated, in general terms, that there is available timber in Florida which would be economically purchased and transported over defendant's line

to their mills in Georgia if reasonable interstate rates were published."

but the Examiner's report goes on with the following pertinent comment, that: "The location or quantity of such timber was not revealed." This comment refers to those parts of the record in which the Florida interests and intervening Georgia mill interests challenged these trumped-up witnesses to back up their biased statements with specific proof of the location of the timber or the quantity thereof which could be purchased by them and transported over the Atlantic Coast Line to a Georgia mill. Not one of these witnesses could meet this challenge. Therefore, if the record is properly understood the Examiner's comment will also be understood to mean that the statements "in general terms" of these few Georgia witnesses have absolutely no [fol. 1158] evidentiary value. Furthermore, attention is directed to the fact that not one of these Georgia witnesses testified that he could buy or would even be in the market for Florida logs adjacent to the Atlantic Coast Line if the rates should be changed.

The Division's statement on sheet 5 of its report, that:

"Some of them testified that there is available timber in Florida which could be economically purchased and transported over defendant's line to Georgia mills if the rates were reasonable."

leaves out the Examiner's fair and warranted comment, that: "The location or quantity of such timber was not revealed." In other words, the Division has accepted the trumped-up and unfounded statements of these few Georgia witnesses, and has failed to understand the cross-examination which showed conclusively that these statements are not based on fact or investigation.

A fair and unbiased reading of the record is convincing that these witnesses, referred to in the above quoted passage, had in mind that probably they might have been able to buy some Florida timber and they might have been able to ship it to Georgia mills if they had had rates no higher than the so-called Cummer scale. All except one unimportant Georgia witness frankly agreed that there could be no shipments from Florida to Georgia, even if they could

buy timber under a rate-level even approximating the then existing interstate rates. In view of the fact that the interstate rates prescribed by the Commission are not substantially less than the interstate rates in effect prior to that date, the logical presumption of fact is that these same witnesses, if recalled to the stand, would testify that there [fol. 1159] is no possibility of interstate movement of logs from Florida to Georgia under the rate-level prescribed by Division 4, even if any timber were available.

The testimony of numerous witnesses which overwhelmingly impeaches and refutes the testimony of unreliable witnesses has been disregarded by Division 4.

3. Florida Witnesses Prove Conclusively That There is no Available Florida Timber

The fact that the Division has omitted from its report the following finding of the Examiner shows clearly to our minds that the Division was not fully informed of the facts. The Examiner's report on sheet 12 states that:

"Several experienced Florida operators and timber cruisers were emphatic in their assertions that there exists no Florida timber in commercial volume within 170 miles of Georgia which could be acquired by Georgia log shippers, as all of such timber is owned by Florida mills."

The sentence which follows the above, in regard to the "few" scattered areas of timber in north Florida held largely by farmers for their personal requirements, was retained in the Division's report, but the above quoted portion of the Examiner's report was deleted from the Division's report. We regard this failure to include the above quoted sentence, (proving the absence of timber for interstate movement) as an extremely unfortunate error in view of the fact that the Florida lumber interests brought a number of expert witnesses to the hearing in order that this important, striking, and unusual fact might be fully proven. The fact has been proven and without question. The fact is vital in that:

[fol. 1160] 4. No Prejudice or Discrimination Can Exist Where There is no Possibility of Present or Future Interstate Movement

It was error to omit the above quoted finding of the Examiner, and the following, on sheet 13 of his proposed report:

"The evidence is convincing that few logs would be transported to Georgia over Defendant's line if complainant were accorded interstate rates on the same level as the Cummer scale. It is probable that few, if any, logs would be hauled to Georgia under the present interstate rates if the Florida rates were increased to the level of such rates."

These findings of the Examiner are fully and convincingly supported by competent evidence of expert and experienced witnesses. There is no evidence to the contrary which can be given serious consideration.

If the Interstate Commerce Commission has any doubt in its mind whether there would be any movement from northern Florida points over the Atlantic Coast Line to any Georgia mill served by that line under the scale of rates prescribed by Division 4, then Petitioners ask that they be allowed an opportunity, at further hearing, to offer evidence which will prove conclusively that there is no remote possibility of any interstate movement whatsoever under the scale prescribed by division 4. This should be unnecessary because the complainant, upon whom the burden of proof rests, has utterly failed to prove that there would be any actual or potential movement under the present rates under the Florida intra-state scale of the Coast Line, or under the scale prescribed by Division 4.

Furthermore, Division 4 has overlooked express findings in its own report that:

[fol. 1161] "While there are a few scattered areas of timber in north Florida held largely by farmers for their personal requirements (not necessarily served by the single defendant in this case) successful exploitation of these tracts, because of their limited extent, could only be accomplished by the use of portable mills operating in close proximity to the standing timber" (sheet 6).

A careful study of the evidence in this record will readily convince the Interstate Commerce Commission of the striking and peculiar characteristic which differentiates this case from the ordinary rate-relationship case, namely, the fact that:

There is no present or potential movement of logs from the Northern fringe of Florida over defendant's line to any Georgia mills. There is no such movement today, and due to extraordinary conditions, any future movement, regardless of what rates may be prescribed as just and reasonable, is precluded from the realm of possibility by economic conditions other than transportation charges.

V. Division 4's Conclusions Respecting the Issues of Undue Prejudice and Unjust Discrimination are Unsupported by Any Competent Evidence, and Without Legal Foundation.

The conclusion of Division 4, on Sheet 7 of its report that:

"The Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within [fol. 1162] the state of Florida, in undue prejudice to shippers of interstate traffic from points in the state of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce."

is unsupported by any competent evidence, is contrary to undisputed evidence, is beyond the scope of the proceeding as defined and restricted at the hearing, is without legal foundation, and is an unwarranted invasion of State's rights.

Proof of Actual Competition is a Condition Precedent to a Finding of Undue Prejudice

The finding of undue prejudice against shippers of interstate traffic from northern Florida points to Georgia mills has no legal foundation in fact or in law. As we understand the Commission's decisions, and those interpreted by the

courts, a finding of undue prejudice against shippers, or persons, must be supported by specific findings of fact naming the persons who are preferred and the persons who are prejudiced. Unless there is some prejudiced shipper or person who is engaged in actual competition with the alleged preferred shipper or person, the allegation of undue prejudice against persons must fall. Applying this principal to the facts of this case it is clear that the Division's report, and the record, utterly fail to disclose a single shipper or person, engaged in the interstate shipment of logs, who actually competes with any single shipper or person engaged in the intrastate shipment of logs. The complainant in this case made no attempt whatsoever to offer specific proof of any instance where a Georgia mill had ever, or would ever, compete with any Florida mill in the purchase and shipment of logs from any point in Florida.
[fol. 1163] Under these circumstances, where can there be any finding of competition which is essential to a legal foundation for a finding of undue prejudice?

A second condition precedent to a legal finding of undue prejudice is actual or potential movement of the commodity or traffic in question from the common points of origin to the alleged prejudiced destinations, as well as the alleged preferred destinations. In other words, there must be some real and substantial movement of the traffic, either existing or in prospect of movement.

The evidence in this record clearly shows that there is no present movement of logs from Florida to Georgia. Therefore, it was incumbent upon comp-ainant to prove that there is some real prospect of movement. The evidence clearly proves that there is no real prospect of movement. Complainant did not attempt to prove that there would or could be any. On the other hand, witnesses representing many mills in Georgia as well as Florida, overwhelmingly proved, by the aid of experts in this field, that there is no timber in Florida available for interstate shipment to Georgia, and other witnesses proved that no logs would move from Florida into Georgia even if the interstate rates should be reduced to the level of the Florida intrastate rates. (See Findings in the Examiner's proposed report.)

Any finding of undue prejudice of no shippers where there is not and could not be any traffic, would be manifestly illegal, and without legal foundation.

In Hunter Bros. Mercantile Co. v. American Ry. Express [fol. 1164] Co., 107 I. C. C. 313, the Commission said:

"The decisive factor is whether or not the intrastate rate affects interstate commerce injuriously to a material extent."

The record conclusively proves that the Florida intrastate rates do not affect any Georgia shippers injuriously to any material extent. The record in this case goes even farther and shows that no Georgia shipper could possibly be affected by any change in the log rates from Florida points to Florida mills. On the other hand, and, as stated in the Examiner's proposed report,

"and material increase in the Florida rates will either cause them to move their plants to the timber or abandon operations. In either event defendant would lose considerable log traffic, the extent of which cannot be readily estimated. It is doubtful if increased Florida rates would compensate defendant for the loss of such traffic."

The facts of record warrant the conclusion at this time that no logs would move from north Florida to Georgia under the scale of rates prescribed by Division 4 and that the increase in the Florida rates to that level would immediately stop the intrastate movement of logs from north Florida to Jacksonville mills. This is due to the fact that the tracts of timber at short haul points have been exhausted, and it is financially impracticable to haul logs for the longer distances under the rates prescribed by Division 4.

Petitioners contend that the Division's conclusion of undue prejudice under section 3 of the Act is unlawful and unsupported by any competent evidence. The following conclusions of the Examiner are based upon competent evidence:

[fol. 1165] "The evidence upon this record does not establish the existence of undue preference of Florida intrastate shippers or localities or undue prejudice of Georgia Interstate shippers or localities under the rates in issue. • • • No specific instance of hurtful discrimination or prejudice has been shown to result from the maintenance of the Florida rates. Testimony for complainant is to the effect

that under certain assumed conditions such discrimination or prejudice might result, but positive proof in this respect is lacking. A finding of unlawful discrimination or undue prejudice cannot be predicted on a mere assumption or assertion of their existence."

Petitioners therefore allege that the finding of undue prejudice of Georgia shippers and undue preference of Florida shippers is unlawful and without legal foundation in that it is unsupported by any competent evidence and is contrary to undisputed evidence, in that two conditions precedent to such a finding, namely, competition, and actual or potential movement, are proven to be wholly lacking.

VI. Division 4's Findings of Unjust Discrimination Against Interstate Commerce is Without Foundation

The Division's Conclusion, on sheet 7, that the Florida intrastate rates assailed result in unjust discrimination against interstate commerce, is not explained in the report on any ground other than the erroneous finding that the Florida rates assailed are "less than reasonably compensatory."

We have commented at length upon the evidence bearing upon the compensatory feature of the Florida intrastate rates. If the Division's conclusion is based upon the finding of fact that the Florida rates are not compensatory, [fol. 1166] then the conclusion is based on errors of fact and contrary to the evidence and should be reversed. If the Division's conclusion is not based upon that finding, then it is manifestly unsupported by any competent evidence and, in addition is beyond the scope of the proceeding in several vital particulars. For example, complainant offered no testimony whatsoever on this question and the issue was practically abandoned.

1. No Interstate Shipper is Hurt

It is inconceivable that the Interstate Commerce Commission should reach this conclusion without any substantial evidence in support thereof, and without a real and substantial showing that the Florida rates affect some real, tangible "interstate commerce injuriously to a material ex-

tent." (Hunter Bros. Mercantile Co. v. A. Ry. Ex. Co. supra). The Interstate Commerce Commission, of course, would not knowingly use an indefinite conclusion of this kind, without satisfactory explanation of the specific injury which would result from the Intrastate rates, as a mere cloak under which to hide substantial defects in pleadings and evidence, in order that the Commission might attempt to exercise its federal authority over purely intrastate traffic.

2. I. C. C. Has No General Regulatory Power Over Intrastate Rates

In the Wisconsin Rate Case, 257 U. S. 563, the Supreme Court of the United States said that its conclusions did not give the Interstate Commerce Commission "unified control of interstate and intrastate commerce," and "does not in- [fol. 1167] volve general regulation of intrastate commerce." Action by the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction, to interstate commerce.

The evidence in this case, hereinbefore discussed, clearly shows that there is no real discrimination against, or obstruction to interstate commerce proven in this case. No Georgia mill owner testified to any real discrimination against him. Many Georgia mill owners opposed the complaint on the ground that there was no real discrimination against or obstruction to interstate commerce. No interstate commerce would be built up under the conclusions of Division 4. Defendants would merely lose tonnage and revenue from intrastate traffic and defendant is not asking for any relief from any burden of intrastate rates, as is usual in the Shreveport cases; Houston & Texas Ry. v. United States 234 U. S. 342.

3. Finding of Unjust Discrimination is Legally Unsound

The Division's conclusion, with respect to unjust discrimination of interstate commerce, is unsound as a matter of law, as well as being contrary to the evidence, and is an unwarranted attempt to exercise Federal authority over State Rates.

If, under the facts and conditions of this proceeding the Division deems that it has the power to regulate intrastate commerce then we respectfully submit that the Division's views are directly in conflict with the view of the Supreme Court in the Wisconsin Rate Case, supra, quoted above, to the effect that the Commission has not power of General regulation of intrastate commerce.

[fol. 1168] We respectfully urge, that since the issues and the parties to this case are so confined and restricted the Interstate Commerce Commission should not attempt to exercise any general regulatory power over Florida intrastate rates in this proceeding. To do so would invade the rights of State which are reserved to it under the constitution of the United States.

4. This Case Differs Materially from the Shreveport Case in Several Fundamental Aspects

In consideration of the above explanations of the fundamental features of this case, special attention is directed to the fact that it differs materially from the ordinary and usual Shreveport Cases (234 U. S. 342), which first gave rise to the exercise of the Interstate Commerce Commission's special jurisdiction or power over intrastate rates. (1) In the typical Shreveport Cases the level of the intrastate rates is usually based upon direct action of a state legislature or state Commission; whereas, in this case, the intrastate rates were voluntarily published by the defendant and the Florida Commission approved of the filing of the amended tariffs. The State authorities did not prescribe the intrastate rates as maximum reasonable rates. The defendant has never been prevented by the State of Florida from making changes in its log rates. (2) In the typical Shreveport Cases the complainant, or the real party in interest is usually the Common Carrier, which, because of the restraint of State regulatory bodies, is prevented from increasing its intrastate rates; whereas, in this case, the defendant has never been prevented from applying to the State Commission for authority to increase its Florida log rates and has never expressed a wish or desire to disturb [fol. 1169] its Florida log rates. In the Shreveport Cases the defendant common carriers are usually complaining defendant which seek relief from state regulation. In this

case the defendant has never requested or sought any change in its Florida intrastate log rates, which it voluntarily published with approval of the Florida Commission. (3) In the usual Shreveport Cases there are ordinarily present at the hearing numbers of shippers, interstate, who are in actual and keen competition with the shippers, intrastate, and who have no difficulty in proving there is real, actual, competition, and that the difference in rate levels actually keeps them out of markets which they could reach if the transportation charges were relieved of artificial barriers imposed by state boundaries and state regulation. In this case no real, active competition is proven, and no actual or potential movement exists, or could exist. Financial and economic laws, other than transportation charges, preclude any actual competition and preclude any actual or potential movement.

VII. Division's Order Will Not Have the Intended Effect

1. Order Will Not Help Any Georgia Shipper

Petitioners ask that the order entered by Division 4, which is intended to remove alleged undue prejudice against Georgia mills and interstate commerce, be revoked, on the ground that it will not have the intended effect.

The order will not help or benefit any Georgia mills, because no Georgia mills filed a complaint and only one testified on behalf of the complaint of undue prejudice and no undue prejudice of any Georgia mill or shipper has been [fol. 1170] proven. The evidence clearly proves that there is no existing movement of logs to Georgia mills, that there is no timber in the northern fringe of Florida available for purchase and shipment over the Atlantic Coast Line to any Georgia mill, and that the shipment of logs for such distances is financially impracticable. No Georgia shipper is hurt by the difference in rates, and no Georgia shipper proposes or expects to use the scale prescribed by Division 4.

2. Order Cannot Affect Other Lines

The order cannot affect all of the other lines. No other carriers in Florida could change their intrastate log rates to the basis prescribed by Division 4. The laws and regu-

lations of the State of Florida prohibit and prevent them from changing their rates until they have secured the express approval of the Railroad Commission of Florida. Therefore, if the order of Division 4 is made the order of the Commission, and if it becomes effective, the federal authority will supersede the Florida laws and regulations insofar as the Atlantic Coast Line is concerned and compel that carrier to revise its intrastate rates without its request or consent, but the federal authority in this case cannot permit all other Florida Railroads to change their log rates also. Neither can all of the carriers, other than the Coast Line, change their rates under the Division's order in this case. In case they should attempt to evade the laws and regulations of the State of Florida it would become the duty of the Railroad Commission and the Executive branch of the sovereign State of Florida, through the office of the Attorney General to compel the carriers, not parties to this proceeding, to continue their present log rates until such time as they may have filed application for changes therein [fol. 1171] with the Florida Railroad Commission and shall have secured that Commission's approval thereof.

If the Division's order against the Coast Line were complied with the traffic from competitive points with other lines, such as the Seaboard Air Line, would simply be diverted to the lines other than the defendant Atlantic Coast Line, and that defendant would lose all of the substantial revenue which it has been receiving from this heavy movement of log traffic.

The order would not benefit, aid or develop interstate Commerce, or any interstate shippers.

3. Order Would Subject Florida Shippers to Irreparable Injury and Destroy Florida Commerce

The order would materially injure Florida intrastate shippers, and cause irreparable injury to large investments of capital in Florida mills, and would throw thousands of their laborers and employee out of work. The order would stop Florida intrastate log traffic, which is moving in large volume and is yielding large aggregate revenues to the defendant railroad.

4. It is Not the Purpose of the Interstate Commerce Act to Destroy Intrastate Commerce

A fair and impartial interpretation of the Interstate Commerce Act, its history, and the circumstances which led to its enactment and subsequent amendments, reveals a definite constructive purpose of aiding and developing commerce between the States, not of destroying intrastate commerce. The purpose of the Act is to enable interstate commerce to move freely, and to rid interstate commerce of any restrictive and retarding obstacles which might be thrown into ways through state regulation of intrastate traffic. The purpose is not to make a mere mathematical and tech- [fol. 1172] nical difference in rates a cloak or pretense for the general regulation of intrastate rates by the Interstate Commerce Commission. The purpose is to aid interstate shippers, when they suffer any real and substantial injury to any material extent by reason of actual preference in state rates. Where these elements are not present it is not the purpose of the Interstate Commerce Act to do substantial injury to intrastate shippers, to destroy invested capital in mills which use logs from intrastate points, or to throw thousands of industrial employees out of work. Where no interstate commerce is existent, actual or potential, it is not the purpose of the Act to compel a carrier, such as the Atlantic Coast Line here, to increase its intrastate rates, against its will, to a basis which will destroy the intrastate traffic and wipe out the revenue therefrom which has been built up under rates of its own making.

VIII. Conclusion

Petitioners feel that the unusual and striking facts of this case are not known and understood by the Division. That, otherwise, the Division would not have made its findings of undue prejudice and unjust discrimination, and would not have entered its order prescribing the method by which the alleged prejudice and discrimination should be removed.

Petitioners therefore ask that the Interstate Commerce Commission weigh the facts and evidence in this case with care, and that it reverse the conclusions and revoke the

order of Division 4 insofar as the issues of undue prejudice and unjust discrimination are concerned.

Petitioners further ask that in the meantime the Inter-
[fols. 1173 & 1174] state Commerce Commission revoke and annul the order of Division 4 in the particulars enumerated above pending reargument and reconsideration.

Railroad Commission, State of Florida, by Fred H. Davis, Attorney General, State of Florida.

Dated at Tallahassee, Florida, September 27, A. D. 1928.

[fol. 1175] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

PETITION OF WILSON LUMBER COMPANY OF FLORIDA FOR LEAVE TO INTERVENE AND FOR RECONSIDERATION AND REARGUMENT —Filed Oct. 1, 1928.

Comes the Wilson Lumber Company of Florida and respectfully petitions that it be permitted to intervene in and become a party to the above-entitled proceeding and that said proceeding be reopened for reconsideration and reargument and as grounds therefor petitioner respectfully states:

I

That petitioner is a corporation organized and existing under the laws of the State of Florida and is now operating a sawmill at Perry, Fla., on the line of the defendant, At-
[fol. 1176] lantic Coast Line; that petitioner has contracts with various companies owning large tracts of timber in Florida, to purchase from them the logs cut from such timberlands; that petitioner has invested approximately $200,000 in its mill and that if the order of the Commission entered herein on the 2d day of August, 1928, becames effective, it will result in an increase of more than one hundred per cent in the rates on the logs which petitioner contracted to purchase, and that petitioner will be unable to operate said mill and its investment will be lost.

II

That the logs which petitioner has contracted to purchase are to be delivered to it at points on the line of defendant, Atlantic Coast Line, south of Perry, Fla., and the movement of said logs to plaintiff's mill at Perry, Fla., will be wholly intrastate; that rates on a relatively low basis for the movement of said logs within the State of Florida are absolutely necessary if said logs are to move because in shipping the lumber, the product of said logs, outbound to the large consuming markets, such as Detroit, Mich., and Chicago, Ill., the manufacturers of lumber in Georgia, and other States north of Florida, enjoy a freight rate advantage over petitioner shipping from Perry, Fla., of from 3 cents to 8 cents per hundred pounds; that the defendant, Atlantic Coast Line Railroad, was advised of the existence of such conditions and was actuated thereby in establishing rates for the movement of logs in Florida on a lower basis [fol. 1177] than maintained by it for interstate movement, and that such lower basis was necessary in order to permit the development of the sawmill industry in Florida; that so long as said rates do not discriminate unduly against interstate commerce, defendant, Atlantic Coast Line Railroad, is justified in maintaining same so as to develop the territory along its lines in Florida and foster the movement of the product of said logs by its line, thereby developing the territory served by it and creating outbound traffic.

III

That no power is vested in this Commission to control intrastate rates except where such control by this Commission is necessary to protect interstate commerce against undue discrimination; that therefore such power as the Commission possesses over intrastate rates is wholly incidental and indirect and this commission should not exercise such incidental power except where it is clearly shown that its exercise is necessary to the protection of interstate commerce and even in such case, only to the extent that its exercise is necessary to remove discrimination against interstate commerce; that in this case all of the evidence shows that if any discrimination exists against interstate com-

merce, it is purely technical, and not actual, and therefore conditions do not exist which are necessary to bring into existence the power upon the part of this Commission to change or prescribe intrastate rates.

[fol. 1178] IV

That under the circumstances existing in this case, as shown by the record, and in view of the incidental nature of the power of the Commission, and further in view of the destructive effect of the Commission's order upon a great industry of the State of Florida, the Commission should not make such order final until the case has been fully considered by the entire Commission. Since the order herein was entered by a division of the Commission, it is respectfully submitted that the case should be reconsidered by the entire Commission, especially as the decision of the Supreme Court in U. S. v. Abilene & Southern R. R. Co., 265 U. S. 274, would seem to make a reconsideration by the entire Commission of the findings of a division advisable, if not necessary.

Wherefore, petitioner, Wilson Lumber Company of Florida respectfully prays that it be permitted to intervene in the above-entitled proceeding, and that the Commission set aside so much of its order of August 2, 1928, as prescribed rates on intrastate hauls within the State of Florida and reopen this proceeding for reargument and reconsideration, and that this petitioner be heard in brief and argument in [fol. 1179] said reopened proceeding, and that the Commission enter such further order, or orders, in the premises as it may seem reasonable and just.

Respectfully submitted.

Wilson Lumber Company of Florida, by J. V. Norman, Norman, Quirk & Graham, Attorneys. Wilson Lumber Company of Florida, by Norman, Quirk & Graham, Attys.

Address Plaintiff's Attorney: Inter-Southern Building, Louisville, Ky.

September 25, 1928.

[fol. 1180] 11. That the intrastate Florida rates charged and received by defendant carrier for the transportation

of logs from Florida producing points to destinations in Florida give undue and unreasonable preference and advantage to intrastate shippers in Florida; and are unduly prejudicial and disadvantageous to the interstate shipper in Georgia, and causes undue and unreasonable and unjust discrimination against interstate commerce in the violation of Section 13 of the Interstate Commerce Act.

12. That the rates herein complained of have already been increased since January 1st, 1910.

Wherefore, the complainants pray:

(a) That the defendant carrier may be required to answer the charges herein, and that after due hearing and investigation an order be made requiring said defendant, the Atlantic Coast Line Railroad Company, to cease and desist from the aforesaid violation of the Interstate Commerce Act.

(b) That the Commission determine and prescribe just, reasonable, non-discriminatory and non-prejudicial interstate rates to be observed and charged in the future by the defendant carrier for the transportation of carload shipments of logs, from all points located in the State of Florida to all destinations located in the State of Georgia; that the measure of said rates be no higher than the rates concurrently in effect for the same kind of property, from producing points located within the State of Florida, moving in intrastate commerce, to destinations within the State of Florida.

(c) That such further order or orders be made as the Commission may consider proper in the premises. Dated at Atlanta, Georgia, April 23rd, 1926.

Georgia Public Service Commission, by James A. Perry, Chairman. E. M. Price, Rate Expert. James A. Perry, E. M. Price.

Atlanta, Ga., April 23rd, 1926.

[fol. 1181] EXHIBIT A

Statement Showing Comparison of Florida Intrastate Rates on Logs per Car 50,000 lbs. and Interstate Rates between Florida and Georgia Points. Both Scales Published for Account Atlantic Coast Line Railroad.

Distance miles	Florida interstate scale	Florida-Georgia interstate scale	Interstate scale higher
5	$8.55	$12.50	46%
10	8.55	15.00	76%
15	8.55	17.50	104%
20	8.55	17.50	104%
25	8.55	20.00	133%
30	8.55	20.00	133%
35	8.55	22.50	163%
40	8.55	22.50	163%
45	10.50	25.00	138%
50	10.50	25.00	138%
55	10.50	27.50	161%
60	11.50	27.50	161%
65	11.50	30.00	160%
70	11.50	30.00	160%
75	11.50	32.50	200%
80	11.50	32.50	200%
85	11.50	35.00	233%
90	11.50	35.00	233%
95	13.00	35.00	169%
100	13.00	35.00	169%
110	14.00	37.50	168%
120	16.00	40.00	150%
130	16.00	42.50	165%
140	17.00	42.50	150%
150	17.00	45.00	164%
160	17.00	45.00	164%
170	18.50	47.50	156%

Tariff Authorities:

Florida Intrastate rates, Supplement 29 to A. C. L. Southeastern Tariff No. 5-B; I. C. C. B-2255, effective August 24, 1925.

Florida-Georgia Interstate rates, Agent Glenn's I. C. C. A-415 (Southern Lumber Tariff No. 6), Supplements thereto and reissues thereof).

[fol. 1182] BEFORE INTERSTATE COMMERCE COMMISSION

[Title omitted]

ORDER DENYING PETITIONS FOR REARGUMENT AND RECONSIDERATION, ETC.—Nov. 1, 1928

Upon further consideration of the record in the above-entitled proceeding and of petitions for reargument and reconsideration filed by the Railroad Commission of the State of Florida and by the intervening defendants and petition of Wilson Lumber Company for leave to intervene and for reconsideration and reargument and of reply to said petitions filed by complainant:

It is ordered, That said petitions be, and they are hereby, denied.

By the Commission:

George B. McGinty, Secretary. (Seal.)

[fol. 1183] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 1184] [Caption omitted]

[fol. 1185] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 511

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY, Petitioners,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

BILL OF COMPLAINT—Filed Nov. 24, 1928

To the Honorable the Judges of the District Court it is respectfully shows as follws:

I

The petitioners, Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, are each

corporations having their principal offices respectively in Eastport, Palatka and Jacksonville, Florida, and each is extensively engaged in the business of manufacturing and selling lumber.

II

The defendant United States of America is made such by virtue of an Act of Congress known as the Commerce Court Act (36 Stat. L., 539) and District Court Jurisdiction Act, [fol. 1186] (38 Stat. L., 219). The defendant Interstate Commerce Commission is an administrative tribunal created by Act of Congress, February 4, 1927, and whose duties and powers are defined in such Act and amendments thereof and supplements thereof.

III

The petitioners are the owners of many millions of feet of standing timber in the State of Florida, located more particularly in the counties of Taylor, Pasco, Citrus, Hernando, Sumter, Orange, Osceola, Brevard, Lake, Volusia, Clay, St. Johns, Putnam, Flagler, Madison, LaFayette, Jefferson, Alachus, Baker, Dixie, Levy and Wakulla. These petitioners own in the aggregate 1,500,000,000 feet of standing uncut timber. The capital value of such standing timber aggregates approximately fifteen millions of dollars. In their cutting, logging, milling and marketing operations the petitioners normally employ more than 2500 men.

At Eastport, Florida, on the St. Johns River, in the vicinity of Jacksonville, Florida, the Brooks-Scanlon Corporation, one of the petitioners herein, owns and operates a large lumber mill having a normal capacity of one hundred million feet annually. It employs at Eastport normally 700 people who, together with their families constitute practically all of the total population of such town of Eastport.

The Wilson Cypress Company, one of the petitioners herein, owns and operates at Palatka, Florida, on the St. Johns River, a large sawmill, employing at such mill and in its logging operations about 600 people. Such employees, together with their families, constitute an important part of the population of the City of Palatka, Florida.

The combined investment of said three petitioners, other than their investment in their standing timber approximates nine million five hundred thousand dollars ($9,500,000.)

The Cummber Cypress Company, one of the petitioners herein, own and operates a large mill at the town of Lachoochee, Florida, employing at such mill and in their logging operations over 850 people.

[fol. 1187] IV

The Atlantic Coast Line Railroad Company owns and operates various lines of railway in the State of Georgia and Florida, including lines from petitioners' timber areas to the respective lumber mills at said Eastport, Lachoochee, and Palatka, described above. Over such line of railway the Atlantic Coast Line transports for petitioners wholly within the State of Florida many carloads of logs. To the lumber mills of petitioners the hauls of logs by railroad over the Atlantic Coast Line from the timber areas of petitioners are all within 170 miles.

For the transportation of such logs wholly within the State of Florida as aforesaid, the Atlantic Coast Line Railroad Company voluntarily established and has continued in effect and now charges and (if lawful so to do) is willing to continue to charge a certain mileage scale of rates known as the "Cummer scale," which, for the varying distance up to 170 miles, provides varying rates "per car of 50,000 pounds, excess in proportion, to be loaded and unloaded by owner and not to be unloaded on the railroad's right of way."

The Atlantic Coast Line Railroad Company also has published and filed with the Interstate Commerce Commission certain rates which would be applicable to any movement of logs over its lines from Florida origins to Georgia destinations which such rates are higher in amount for like distances than the so-called "Cummer scale" applicable for the certain distances and under certain conditions between points in Florida as above described.

V

The Georgia Public Service Commission is an administrative tribunal created and existing by authority of law

under the constitution and the statutes of the State of [fol. 1188] Georgia, having its official residence in the City of Atlanta, which is in the northern district of Georgia, and so within the jurisdiction of this Court.

VI

On or about to-wit, May 5, 1926, such Georgia Public Service Commission in its own name, filed with the Interstate Commerce Commission a certain complaint against the Atlantic Coast Line Railway Company. In such complaint it was alleged that the rates of freight of logs published by the Atlantic Coast Line Railroad as applicable to shipments of such commodity from origins on its line in Florida to destinations on its line in Georgia then were and thereafter would be unjust and unreasonable in violation of the provisions of Section 1 of the Interstate Commerce Act. It was further alleged in such complaint that the contemporaneous publication of such interstate and intrastate rates above described constituted and thereafter would constitute undue prejudice and disadvantage to Georgia Lumber manufacturers and Georgia communities and unjust discrimination against interstate commerce to the undue preference and advantage of shippers of logs between points in Florida in violation of the provisions of Sections 3 and 13 of the Interstate Commerce Act.

VII

Thereupon such complaint was served by the Interstate Commerce Commission upon the Atlantic Coast Line Railroad Company which thereafter, and in due course, filed with the Interstate Commerce Commission its answer thereto and in such answer the railroad denied that there was or had been any violation on its part of the interstate commerce act.

[fol. 1189] The Interstate Commerce Commission, also, in compliance with Sections 13 (3) of the Interstate commerce act, notified the State of Florida and the Florida Railroad Commission of the proceedings, and that Commission upon the subsequent hearing appeared in defense of the Florida intrastate rates.

Before such complaint and the matters and things involved therein were assigned for public hearing the Commission received and allowed a petition for intervention which was filed by the Elberta Crate Company, of Bainbridge, Georgia, which such intervention appeared to be in support of the complaint.

VIII

Thereafter, on or about to-wit, the twentieth day of October, 1926, the Interstate Commerce Commission without other pleadings in order of investigation, assigned for full public hearing in Valdosta, Georgia, such complaint of the Georgia Public Service Commission and the matters and things therein involved; and at that time and place such public hearing was commenced.

Before the introduction of any evidence at such hearing by any parties there were filed with the Interstate Commerce Commission at such public hearing a number of petitions of intervention in opposition to such of the complaint of the Georgia Public Service Commission as alleged any violation of Sections 3 and 13 of the Interstate Commerce Act by the Atlantic Coast Line Railroad Company. Such interventions were then received and allowed in behalf of the following parties, to-wit: each of the petitioners herein, together with the Putnam Lumber Company, and Cummer Lumber Company, each then of Jacksonville, Florida, and having extensive timber ownership in substantially the same Florida territory as those petitioners and then operating lumber mills in Jacksonville, Florida, and then ship-
[fol. 1190] ping over the Atlantic Coast Line Railroad to its mill logs in large amounts; the Georgia-Florida Sawmill Association, embracing at that time a large majority of the lumber manufacturers in that part of the State of Georgia, involved in that proceeding; the Southern Pine Association and the Southern Cypress Manufacturing Association, embracing within their membership numerous manufacturers of pine and cypress lumber in Florida, Georgia and elsewhere in Southern territory; and the Jacksonville Traffic Bureau, a civic organization in the City of Jacksonville, embracing within its membership numerous industrial, financial and other commercial interests therein.

There also intervened in such case or proceeding before the Interstate Commerce Commission the Seaboard Air Line Railway Company, the Central of Georgia Railroad Company, the Southern Railway Company, the Georgia-Sourthern and Florida Railroad, and the American Short Line Railroad Association. Such parties intervened in behalf of the defendant Atlantic Coast Line Railroad Company on the issue of alleged violation of Section 1 of the interstate commerce act in respect to the measure of rates on logs published by the Atlantic Coast Line for application to shipments from origins on its lines in Florida to destinations on its line in Georgia; but the intervention of such other railroads was in intended and professed support of the complaint of the Georgia Public Service Commission and against the Atlantic Coast Line in so far as said complaint of the Georgia Public Service Commission alleged that the Atlantic Coast Line Railroad Company was violating the provisions of Sections 3 and 13 of the interstate commerce act by the continued maintenance over its lines from Florida to Georgia and the lower intrastate rates over its line between points in Florida.

IX

Thereupon the Georgia Public Service Commission, the Elberta Crate Company, the Atlantic Coast Line Railroad [fol. 1191] Company and the other intervening railroads submitted at such public hearing in Valdosta certain evidence upon conclusion of which petitioners herein, the Putnam Lumber Company, Cummer Lumber Company, and all the other intervening shipper defendants, and the Florida Railroad Commission submitted and filed a motion to dismiss the proceedings in entirety on the ground that there was a total insufficiency of evidence remotely tending to sustain any allegations in the complaint or sufficient to constitute a cause of action within the power of the Interstate Commerce Commission. Such motion to dismiss was thereupon taken under advisement and the hearing at Valdosta adjourned to a date thereafter to be fixed.

X

Prior to the further hearing the Georgia Public Service Commission petitioned the Interstate Commerce Commis-

sion for leave to reopen the record and to submit further evidence in its behalf, which such petition was granted, and thereupon the case came on for further public hearing in the City of Jacksonville commencing on the eighteenth day of January, 1927. At such time certain additional evidence was submitted by the Georgia Public Service Commission and the Atlantic Coast Line Railroad Company, upon the conclusion of which the petitioners here, the Putnam Lumber Company, Cummer Lumber Company and all the other intervening shipper defendants, and the Florida Railroad Commission renewed the previous motion to dismiss the case, which such motion was taken under advisement and the hearing proceeded. Thereupon the petitioners here, the Putnam Lumber Company, Cummer Lumber Company the other intervening defendants referred to, and the Florida Railroad Commission, without waiving their motion to dismiss, submitted a substantial amount of evidence all of which was received and allowed and made a part of the record in such case.

[fol. 1192] XI

Thereafter, on or about to-wit: the fifteenth day of August 1927, an Examiner of the Interstate Commerce Commission, to whom the case has been assigned for the taking of evidence and submission of proposed report, did file, submit and serve upon all interested parties his proposed report in such proceedings. In such proposed report it was found and concluded by the Examiner and recommended by him that the Commission find and conclude that the interstate rates on logs published by the Atlantic Coast Line Railroad for application from origins in Florida to destinations in Georgia were and thereafter would be unreasonably high in slight amounts. It was, however, found and concluded by the Examiner and recommended by him that the Commission conclude that under the evidence of record in the case there did not then exist any interstate commerce in logs over the Atlantic Coast Line Railroad from Florida origins to Georgia destinations on its line, that the differences in prevailing rates applicable to logs moving over the Atlantic Coast Line wholly within Florida and those published for application over the Atlantic Coast Line from Florida to Georgia has not, did not and would not cause or

constitute undue or unjust prejudice or disadvantage against interstate shippers or communities or undue preference or advantage of Florida intrastate shippers or communities or undue preference or advantage of Florida intrastate shippers or communities, and that the evidence before the Commission did not establish any case of unjust discrimination against interstate commerce as such by reason of the voluntary continuance of the lower Florida intrastate rates on logs by the Atlantic Coast Line Railroad.

[fol. 1193] XII

Thereafter, the Georgia Public Service Commission and the intervening railroads hereinbefore named filed with the Interstate Commerce Commission exceptions to such proposed report of the Commission Examiner to which exception replies were in due course filed by petitioners herein, the Putnam Lumber Company and by the other intervening defendants, including the Southeastern Forest Products Association, which had then succeeded the association formerly known as the Georgia-Florida Sawmill Association, an original intervening defendant, and also by the Florida Railroad Commission.

In due course the case or proceeding, including the exceptions to the proposed report of the Commission Examiner and replies thereof, came on to be orally argued in Washington, D. C. before two members of the Interstate Commerce Commission constituting a majority of Division 4 thereof at such time. At such argument there appeared counsel for the Georgia Public Service Commission on the one side and for the State Railroad Commission of Florida and the Atlantic Coast Line Railroad Company and the intervening shipper defendants, on the other side.

[fol. 1194] XIII

Thereafter, on August 2, 1928, such Division 4 of the Interstate Commerce Commission rendered its certain report and order in the proceedings herein referred to, attached hereto and made a part hereof, being marked Appendix "A".

In such report and order it was found and concluded by such Division 4 of the Commission that the interstate rates

on logs published by the Altantic Coast Line Railroad to Georgia destinations on its line from Florida origins on its line north of and including Jacksonville, Gainesville, Burnette's Lake and High Springs were, and would be, unjust, and unreasonable in violation of the provisions of Section 1 of the interstate commerce act in the same amounts previously found and recommended to it by the Examiner.

It was, however, further found by such Division 4 as follows:

"We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce."

"We further find that said undue preference and advantage, undue prejudice, and unjust discrimination can and should be removed by the establishment of rates for intrastate application within Florida which shall correspond with the rates herein found reasonable for interstate application from Florida to Georgia."

"We further find that whether the aforesaid rates pertain to transportation in interstate commerce or to transportation in intrastate commerce the transportation services in each instance are performed by defendant under substantially similar circumstances and conditions."

Accompanying such report was an order requiring the Atlantic Coast Line Railroad to establish on or before October 10, 1928, the interstate rates on logs therein described and (without any date being fixed therefore) requiring the Atlantic Coast Line Railroad to cease and de-
[fol. 1195] sist from practising the undue preference and advantage undue prejudice and unjust discrimination found in such report to exist "in the relation of intrastate to interstate rates" and to establish and put in force for the movement of logs between any two stations on its railroad throughout the State of Florida rates which should be the same as those prescribed as reasonable for the trans-

portation of lots to Georgia destinations on its line from origins in Florida on its line north of and including Jacksonville, Gainesville, Burnette's Lake and High Springs.

XIV

Thereafter, such Division 4, by an order dated the 27th day of August, 1928, fixed and prescribed November 10, 1928, as the date upon which the Florida intrastate log rates of the Atlantic Coast Line Railroad should be advanced for the reasons, in the manner and to the extent hereinabove described. Subsequently such effective date of the prescribed increases in Florida rates on logs of the Atlantic Coast Line was extended to December 10, 1928.

XV

On or about, to-wit: October 1, 1928, petitioners herein, the Putnam Lumber Company, Cummer Lumber Company, the other intervening defendants filed with the Commission their petition for reargument and reconsideration of that part and portion of the report and order of Division 4 as had found the Florida intrastate log rates of the Atlantic Coast Line Railroad violative of Sections 3 and 13 of the Interstate Commerce act. On the first day of November, 1928, a majority of the full membership of the Interstate Commerce Commission denied such petition for reargument and reconsideration.

[fol. 1196] XVI

Wherefore, having exhausted their administrative remedies, petitioners herein respectfully institute this proceeding for the purpose of annulling, vacating and setting aside such report and order of the Interstate Commerce Commission and enjoining enforcement thereof in so far as such report and order in any way dealt with the Florida Intrastate rates of freight of the Atlantic Coast Line Railroad Company therein involved, an- affecting shipments of logs under such rates to petitioners from their points of shipment in Florida to their lumber mills in Florida, as hereinabove described.

And as grounds therefor, petitioners respectfully show unto the Court that said report and order, in respect to such

Florida interstate rates on logs of the Atlantic Coast Line Railroad Company are arbitrary and unreasonable, beyond the power of the Interstate Commerce Commission, and wholly invalid and unlawful in the following respects and for the following reasons, among others.

XVII

Such report and order of the Commission are unlawful because there is not and cannot be any interstate commerce in logs over the Atlantic Coast Line Railroad from Florida origins to Georgia destinations on its line.

XVIII

Such report and order of the Commission are unlawful because there is no affirmative finding by the Commission that there is or could be or would be any such interstate commerce in logs over the Atlantic Coast Line Railroad from Florida origins to Georgia destination on its line.

[fol. 1197]

XIX

Such report and order of the Commision are unlawful because the Commission put upon the Atlantic Coast Line Railroad Company and the intervening shipper defendants the burden of proving that there could not or would not be any such interstate commerce in logs over the Atlantic Coast Line Railroad from Florida origins to Georgia destinations on its line.

XX

Such report and order of the Commission are unlawful because there was no substantial evidence before the Commission that there was, could be, or would be any such interstate commerce in logs over the Atlantic Coast Line Railroad Company from Florida origins to Georgia destinations on its line.

XXI

Such report and order of the Commission are unlawful because the evidence before the Commission completely proved and established that there is not, could not be and would not be any interstate commerce in logs over the At-

lantic Coast Line Railroad Company from Florida origins to Georgia destinations over its line.

XXII

Such report and order of the Commission are unlawful because it is not found therein that such interstate commerce in logs over the Atlantic Coast Line Railroad Company from Florida origins to Georgia destinations over its line, would or could result from an increase in such Florida interstate log rates of the Atlantic Coast Line Railroad Company hereinabove described, as would make them correspond to the interstate rates required in said report and order to be established as just and reasonable rates to apply from Florida origins to Georgia destinations over [fol. 1198] the Atlantic Coast Line.

XXIII

Such report and order of the Commission are unlawful because there was no substantial evidence before the Commission showing or tending to show that interstate commerce in logs over the Atlantic Coast Line Railroad Company from Florida to Georgia could or would result from the compulsory increase of the Florida interstate rates on logs of the Atlantic Coast Line Railroad Company in the amount and to the extent therein found and prescribed as reasonable for the interstate transportation of logs over the Atlantic Coast Line Railroad Company from Florida to Georgia.

XXIV

Such report and order of the Commission are unlawful because contrary to the evidence before the Commission, which said evidence completely proved and established that the compulsory increase of such Florida intrastate rates on logs of the Atlantic Coast Line Railroad Company could not and would not result in the creation of intertsate commerce in logs over the Atlantic Coast Line Railroad Company from Florida to Georgia.

XXV

Such report and order of the Commission are unlawful because there was no substantial evidence of record before

the Commission showing or tending to show that substantially similar circumstances and conditions surround the transportation of logs by railroad, on the one hand, over the Atlantic Coast Line Railroad Company between points in Florida, and, on the other hand, from origins on its line in Florida to destinations in Georgia.

[fol. 1199] XXVI

Such report and order of the Commission are unlawful because there was no issue or controversy under the issued as restricted and defined at the hearing as to the question that the lower level of such Florida intrastate log rates of the Atlantic Coast Line Railroad Company caused or would cause unjust discrimination against interstate commerce as such in violation of Section 13 of the interstate commerce act.

XXVII

Such report and order of the Commission are unlawful because there was no evidence whatsoever before the Commission supporting or tending to support the conclusion that the continued maintenance of such Florida intrastate log rates of the Atlantic Coast Line Railroad Company would subject interstate commerce to unjust discrimination in violation of Section 13 of the interstate commerce act.

XXVIII

Such report and order of the Commission are unlawful because they seek to interfere with the voluntary continuance of such Florida intrastate rates on logs over its line by the Atlantic Coast Line Railroad Company without any substantial evidence showing or tending to show that the continuance of such Florida intrastate log rates in any way violates the provision of Section- 3 and 13 of the interstate commerce act, and without any request or petition by said Atlantic Coast Line Railroad Company, to either the Interstate Commerce Commission or to the Florida Railroad Commission to increase such Florida intrastate Log Rates, and without any other effort whatsoever by said Atlantic Coast Line Railroad Company, to increase said rate.

XXIX

[fol. 1200] Such report and order of the Commission are unlawful because the only conclusion of fact asserted by the Commission to sup-ort its finding that the continued maintenance of such Florida intrastate log rates would unjustly discriminate against interstate commerce in that such rates are "less than reasonably compensatory." Petitioners respectfully aver that there is no substantial evidence to support such finding and further that if such conclusion of the Commission were supported by evidence, it would be and is insufficient to support the finding and order that interstate commerce would be unjustly discriminated against in violation of Section 13 of the interstate commerce act by the continued and voluntary maintenance of such Florida intrastate log rates.

XXX

Such report and order of the Commission are unlawful because the facts of record before the Commission do not show that there is or would be any real or substantial injury to or restriction upon interstate commerce as a consequence of the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company herein referred to.

XXXI

Petitioners further respectfully show unto the Court that the operation and effect of such order of the Interstate Commerce Commission will be to cause irreparable damage and injury in this, to-wit:—such order would require that the Atlantic Coast Line Railroad Company very greatly increase the transportation charges now being paid by petitioners herein for the transportation of logs to their lumber mills in Florida from their Florida shipping points in their timber areas in that state; such increases in transportation costs would immediately render it unprofitable to attempt to continue to transport such logs by railroad to existing lumber mills which are located substantial dis-
[fol. 1201] tances away from the sources of the timber supply; on account thereof petitioners herein would immedi-

ately be required to discontinue and abandon their existing lumber mill operations and undertake to reconstruct new mills in the timber areas at the sources of supply of logs so as to completely avoid common carrier railroad transportation thereof; that such closing down of existing mills and their reconstruction and relocation in the timber areas would involve expenditure of several millions of dollars by petitioners, which sums, however, would be less than pay ment of the increased transportation charges on the remaining uncut timber owned and being developed by petitioners in Florida; and that such immediate shut-down and closing of such large lumber mills of petitioners would at once throw out of employment thousands of persons, causing distress to them and their families, to the communities in which they reside and to the merchants and other commercial enterprises dependent upon the continued operation of the lumber mills of petitioners at their present locations. Such damages to petitioners, thousands of innocent persons and to public institutions in the state of Florida could not be compensated for nor adequately redressed by any suit or suits at law, and petitioners have no plain, complete and adequate remedy at law available to them in the premises.

XXXII

That said action of said Interstate Commerce Commission constitutes an unlawful invasion of the sovereign rights of the State of Florida reserved to it under the Constitution of the United States, and of the citizens of the State of Florida, and is without any warrant or authority of or under the Constitution of the United States; and further that the said Commission was and is without jurisdiction to enter the same.

[fol. 1202] XXXIII

That said action of said Interstate Commerce Commission constitutes an unlawful exercise of power by the said Interstate Commerce Commission and is without warrant or authority of or under the Constitution of the United States.

XXXIV

Since the commencement of the proceedings before the Interstate Commerce Commission and their participation

therein the Putnam Lumber Company and Cummer Lumber Company, intervening shipper defendants, have ceased to transport logs intrastate over the Atlantic Coast Line Railroad in Florida.

Wherefore it is respectfully prayed by petitioners herein as follows:

(1) That process may issue against the defendants herein with service thereof and of this bill of complaint in the manner prescribed by statute;

(2) That this Honorable Court will grant to petitioners herein an interlocutory order setting aside and enjoining enforcement of such part, or parts of the order of the Interstate Commerce Commission hereinabove described and affecting Florida intrastate rates as alleged to be unlawful, and the operation and effectiveness of any rate or schedules of rate finding, with said Interstate Commerce Commission purporting to be in compliance with its said order, such interlocutory order to continue in force until further order of the Court;

(3) That upon final hearing there will be made and entered a decree and order of this Honorable Court annulling, setting aside and enjoining enforcement of such part or parts of the order of the Interstate Commerce Commission hereinabove described and affecting Florida Intrastate Rates as alleged to be unlawful, and the operation and ef-
[fol. 1203] fectiveness of any rate or schedules of rate finding, with said Interstate Commerce Commission purporting to be in compliance with its said order; and

(4) That Petitioners herein may have such other and further relief as the facts shown unto this Honorable Court shall entitle them and require.

Respectfully submitted.

Edward P. Sanborn, Geo. L. Rutherford, H. P. Adair, H. P. Osborne, E. W. Mitchell, Solicitors for Petitioners. Chas. E. Cotterill, 505 Grant Building, Atlanta, Georgia; August G. Gutheim, Number Eight Jackson Place, Washington, D. C., of Counsel for Petitioners.

[fol. 1204] *Duly sworn to by M. J. Scanlon. Jurat omitted in printing.*

[fols. 1205-1217] Exhibit "A" to bill of complaint omitted; printed side page 19 ante.

[fol. 1218] In United States District Court

[Title omitted]

Notice of Application for Injunction

To the Attorney General of the United States, the Interstate Commerce Commission:

You will hereby take notice that the petitioners herein will present to the District Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division, at Atlanta, Georgia, an application for a temporary or interlocutory injunction or a temporary stay or suspension, restraining the United States of America and the Interstate Commerce Commission from enforcing a certain order entered by the Interstate Commerce Commission on the second day of August, 1928, as specifically set forth in the Bill of Complaint herein, copy of which Bill is attached hereto, and in the written Motion, copy of which is also attached hereto, and that said application will be for hearing at Atlanta, Georgia, at 10 o'clock a. m., on the third day of December, 1928, or as soon thereafter as the Court may hear the same.

[fol. 1219] Dated this — day of November, 1928.

Edward P. Sanborn, Geo. L. Rutherford, H. P. Adair, H. P. Osborne, E. W. Mitchell, Solicitors for Petitioners. Chas. E. Cotterill, 505 Grant Building, Atlanta, Georgia; August G. Gutheim, Number Eight Jackson Place, Washington, D. C., of Counsel.

Service, by copy, of the within application and notice is hereby acknowledged this 26 day of November, 1928.

William J. Donovan, the Assistant to the Attorney General, for the Attorney General of the United States. Daniel W. Knowlton, Chief Counsel Interstate Commerce Commission.

[fol. 1220] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES—Filed Dec. 24, 1928

United States, for answer to the bill of complaint filed herein against it, says:

I

United States admits the facts and conclusions alleged in paragraphs I, II, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV and XV of the bill of complaint, but alleges that the matters and things set forth and alleged in said paragraph XI are irrelevant and immaterial to any issue raised by or involved in this proceeding, and are mere surplusage, because the proposed report of the examiner is not the report or order of the Interstate Commerce Commission and is not and could not be attacked in this proceeding.

II

For answer to paragraph III of the bill of complaint, United States says it has not sufficient knowledge or information upon which to form a belief concerning the matters and things in that paragraph alleged, and, therefore, as to them, neither admits nor denies.

III

United States denies the allegations and conclusions contained in paragraphs XVI to XXXIII, inclusive, of the bill of complaint.

[fol. 1221]

IV

For answer to paragraph XXXIV of the bill of complaint, United States says it has no knowledge, information or belief concerning the allegations of said paragraph and therefore neither admits nor denies.

V

Except as herein expressly admitted United States denies the truth of each and every allegation made and contained

in the bill of complaint in so far as they conflict either with the allegations herein or with the statements or conclusions of fact included in said report and order of August 2, 1928.

Wherefore, having fully answered, defendant prays that the bill of complaint be dismissed at the cost of the petitioners and for such other and further order as may be appropriate.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

[fol. 1222] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 1223] IN UNITED STATES DISTRICT COURT

PETITION FOR INTERVENTION AS DEFENDANT BY GEORGIA PUBLIC SERVICE COMMISSION—Filed Dec. 29, 1928

To the Honorable the Judges of the United States District Court for the Northern District of Georgia:

Now comes Georgia Public Service Commission and respectfully represents that it was the complainant before the Interstate Commerce Commission in the proceeding which resulted in the report and order which is the subject matter of the litigation in this cause.

Your petitioner desires to appear and be made a party defendant in the said cause and to be represented before this Court in the disposition thereof.

This petition is made in accordance with Section 213 of the Federal Judicial Code.

Respectfully submitted.

Georgia Public Service Commission, by Jas. A. Perry, Chairman. Jas. A. Perry, Atty. for Georgia Public Service Commission.

The foregoing petition of Georgia Public Service Commission is granted, this 29th day of December, 1928.

Sam'l H. Sibley, Judge United States District Court, Northern District of Georgia.

[fol. 1224] IN UNITED STATES DISTRICT COURT

ANSWER OF GEORGIA PUBLIC SERVICE COMMISSION—Filed Dec. 29, 1928

Georgia Public Service Commission, intervening defendant in the above entitled suit, now and at all times hereafter saving and reserving to itself all manner of benefit and advantage of exceptions to the many errors and insufficiencies in the complainants' bill of complaint contained, for answer thereunto and to so much or such part thereof as it is advised that it is material for it to answer, says:

1

This intervenor admits the allegations of paragraph 1 of the bill.

2

Intervenor admits the allegations of paragraph 2 of the bill.

3

Intervenor admits that the complainants are owners of large tracts of standing timber in the State of Florida. The extent of the ownership or of the investment is unknown to intervenor. Intervenor alleges that the large holdings of the complainants in standing timber in the State of Florida have been used and are being used in competition with saw mill owners in the State of Georgia in interstate commerce; that the lumber manufacturers in Florida and in Georgia seek the same markets and the same consumers and come into serious competition with each other at points out of the States of Florida and Georgia and in the large consuming points in other parts of the United States.

4

The allegations of paragraph 4 as to the ownership of lines of railway by the Atlantic Coast Line Railroad Company in the States of Georgia and Florida and as to the transportation of logs over such lines of road, are admitted. [fol. 1225] Intervenor is advised as to the history of the "Cummer Scale" of rates on logs in Florida through the

record made before the Interstate Commerce Commission and this record will be before the Court; that the Atlantic Coast Line has published and filed with the Interstate Commerce Commission certain rates applicable to movement of logs over its line from points of Florida origin to Georgia destinations, and that those rates are higher in amount for like distances than the so-called Cummer scale, is admitted. The rates known as the "Cummer scale" were found to be unreasonable by the Florida Commission, as is set out in the report of the Commission.

5

The allegations of paragraph 5 as to the Georgia Public Service Commission, are admitted.

6

The allegations of paragraph 6 are admitted.

7

The allegations of paragraph 7 are admitted.

8

This intervenor admits that the Interstate Commerce Commission set the intervenors' above mentioned petition for hearing at Valdosta, Georgia, on the 20th day of October, 1926, and that a hearing was had at that time and place. A number of persons intervened in opposition to petitioner's petition, including the complainants in the above mentioned cause.

9

Intervenor admits that the Seaboard Air Line Railway, the Central of Georgia Railroad, the Southern Railway Company, the Georgia Southern & Florida Railroad and the American Short Line Railroad Association intervened. Each and all the interventions mentioned in said petition are referred to. They became a part of the record before the Commission and a part of the elements of decision.

10

Intervenor, answering the allegations of paragraph 9, [fol. 1226] avers that intervenor and certain of the other

persons at interest who had intervened in the cause before the Interstate Commerce Commission, submitted evidence at the Valdosta hearing and that the complainants and certain others submitted a motion to dismiss intervenor's petition, which motion was not granted by the Commission, but was denied.

11

Intervenor avers that there was a further hearing in the cause before the Commission in the City of Jacksonville, Florida in January, 1927, and that at said hearing a large amount of additional evidence was offered, consisting of oral testimony of witnesses and of a large number of exhibits and statistics. The said hearing lasted four days during which time many witnesses were examined on both sides of the contention.

12

Intervenor admits that the examiner taking the evidence filed a proposed report in this proceeding. Said proposed report was filed in accordance with the practice in such matters appertaining before the Commission. Said proposed report is referred to and must speak for itself.

13

Intervenor admits that it and other parties at interest in the said hearing who had intervened therein, filed exceptions to all or parts of the above mentioned proposed report; that those exceptions came on to be argued orally and in Washington; that the same was argued; said argument was had before Division 4 of the Commission on the 16th day of December, 1927. The complainants in said cause were heard orally by counsel and filed briefs in said cause.

14

Intervenor admits that Division 4 of the Interstate Commerce Commission rendered a report and order which is attached as Exhibit A to the bill. The report and order are referred to for their contents. In said report, the Inter-

[fol. 1227] state Commerce Commission found in part as follows:

"Florida intrastate rates on logs except cedar in car loads, found to be unduly preferential of shippers in intrastate commerce, unduly prejudicial to shippers in interstate commerce and unduly discriminatory against interstate commerce."

The Commission prescribed rates which would remove the said discrimination.

15

It is admitted that Division 4 of the Commission extended the effective date of its aforementioned order to November 10, 1928, and again to Devember 10, 1928.

16

It is admitted that the complainants and certain others filed with the Commission a petition for reargument and reconsideration of so much of the Commission's order as found the Florida intrastate log rates of the Atlantic Coast Line Railroad Company violative of Sections 3 and 13 of the Interstate Commerce Act, and that this motion was denied by the full Commission.

17

Intervenor denies that the report and order of the Commission in respect to the Florida intrastate rates on logs of the Atlantic Coast Line Railroad Company are arbitrary and unreasonable or beyond the power of the Interstate Commerce Commission, or that the same are invalid and unlawful.

Intervenor denies the allegations of paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 of the bill.

Further answering the said bill intervenor avers:

(1) That under the so-called Cummer scale of rates, that is the Florida intrastate log scale for not exceeding one hundred and seventy (170) miles, the Florida producer of lumber is given a great advantage over his competitor in

the State of Georgia. To illustrate: for one hundred and seventy miles, the maximum distance of the Cummer scale, the Florida rate on a car of 50,000 pounds, is $18.50, and the interstate rate for the corresponding distance is $47.50. [fol. 1228] The Florida scale is less than one-half of the scale applicable in interstate commerce. The State of Florida, because of the nature of its traffic conditions, generally has higher rates than those which apply on the same commodities for similar distances in other States of the Southeast. The log rates prescribed by the Cummer scale are the lowest in the Southeastern territory, and intervenor avers that it would be wholly impracticable for a Georgia producer of lumber to buy logs in Florida and have them carried to his mill in Georgia, for to do that would put a charge on the carriage, of about two and a half times as much as the charge which would have been if the logs had moved a like distance under similar circumstances in the other direction to a Florida destination. The inevitable result of this is to prevent movements of logs from Florida into Georgia.

(2) Intervenor avers that the lumber which is manufactured in Georgia out of logs brought from Florida points of origin must bear a tariff or a tax or a charge or a burden commensurate with the aforementioned difference in the transportation of the logs out of which the lumber is manufactured; that this handicap on the Georgia industry is reflected by the large plants which are located in Florida as compared with those located in Georgia.

(3) Intervenor avers that the intrastate rates in Florida under the Cummer scale are so unreasonably low that they cannot be provided as rates on intrastate commerce in Georgia and in the event the Georgia producer hauls logs for a like distance from a point of origin in Georgia to his mill in Georgia, the same kind of burden will be placed upon the Georgia producer as if the logs had orignated in Florida. So that when the Georgia lumber meets the Florida lumber in interstate competition, the Georgia manufacturer is placed at an unreasonable disadvantage in all circumstances.

(4) Intervenor avers that there is ample evidence to sup- [fol. 1229] port all of the findings of the Commission; that

this evidence consisted of oral testimony evidenced by exhibits and statistics, all of which were introduced in a closely contested proceeding which consumed a number of days at each of the hearings, and then another day in the oral argument before the Commission, besides the filing of briefs and the other motions for reconsideration and reargument, which are referred to in the bill.

(5) There was evidence to support the fact that there was standing timber available for purchase to be used for shipment out of the State of Florida and into the State of Georgia. There was evidence to support the proposition that pending this controversy, standing timber had been purchased by the Florida interests, which timber is under negotiation by Georgia interests, and that this timber was to be used to manufacture lumber in Georgia. Intervenor avers that it would be natural that the Florida lumber manufacturer could outbid the Georgia manufacturer for standing timber in Florida, because the Florida producer has the advantage of the Cummer scale, while the Georgia producer would be at the disadvantage of the interstate scale, to the extent hereinbefore indicated and more fully laid before the Commission.

(6) Intervenor avers that, if it be true that the complainants in this case and their associated companies who intervened in the cause before the Interstate Commerce Commission have acquired their monopolistic holdings in the standing timber in Florida indicated by the allegations of the bill and to such extent that there is now no more standing timber available for sale, that has been made possible by the existence of the Cummer scale and is one of the patent ills worked by the Cummer scale against interstate commerce.

(7) Furthermore, intervenor avers that if the scales of rates were upon equality, the self interest of the present holders of the standing timber in Florida, including the self interest of the complainants themselves, would dictate the [fol. 1230] sale of that timber to the mills in Georgia, which are nearer to that timber than are the mills in Florida.

(8) Intervenor avers that the mills in Florida having acquired large holdings of timber in circumstances which en-

able them through the Cummer scale to outbid competitors in the State of Georgia, seek to continue to hold an unjust and unreasonable advantage acquired through the misuse of transportation rates—all of which is prejudicial to interstate commerce and to the manufacturers of lumber in Georgia, and contrary to the statutes in such cases made and provided.

9

(a) Intervenor avers that in 1921 it, in the discharge of its duties as a public service commission of Georgia, undertook a revision of the Georgia intrastate rates of rail carriers.

The carriers submitted a scale of rates on forest products to be applied without transit and a scale of net rates to be applied on logs and other products under transit arrangements. At the time this was done the Georgia carriers announced their purpose to seek authority to adopt the scale thus submitted for uniform interstate application throughout their several systems, to seek the authority of the various state commissions to make effective the same scale on intrastate traffic in other states as well as the State of Georgia.

The Georgia Commission did not approve the rates submitted, but after extensive hearings it issued, on April 25, 1925, an order to become effective June 1, 1925, prescribing certain rates on logs. Those rates, while lower than the scales submitted by the carriers, were somewhat higher than the existing rates in Georgia.

On May 29, 1925 the Georgia Commission suspended the rates prescribed on April 15, 1925 and a further hearing was held. At this rehearing the evidence was directed largely to the matter of discrimination in respect to which the Georgia Commission stated to the Georgia carriers as follows:

[fol. 1231] "The evidence submitted at the rehearing reveals what is, in the opinion of the Commission, an intolerable situation, as regards the rates in Florida, as compared with the interstate rates between Georgia and Florida, and the effect on this situation of the suspended rates authorized in the Commission's order" (Transcript, p. 210).

(b) To illustrate some of the unusual features of the Florida intrastate log rate which is complained of; that scale begins at 1.71¢ per 100 pounds for a movement of 5 miles and the same rate continues through the 45 mile distance while the corresponding interstate rate begins at 2.5¢ for the 5 miles distance and is graduated, being at 4¢ for 25 miles and 4.5¢ for 45 miles; at 170 miles the Florida rate is 3.70¢ per 100 pounds and the corresponding interstate rate is 9.5¢ per 100 pounds; 170 miles being the maximum distance to which this scale is applicable; the rate for 180 miles becomes 8.33¢ per 100 pounds as compared with 3.7¢ per 100 pounds for 170 miles; the Florida intrastate rate on logs is very much less than its intrastate rate on short logs; the rate on short logs begins at 2.13¢ for 5 miles while on logs it begins at 1.71¢ and at 170 miles the rate on short logs is 6.25¢ and on logs it is 3.71¢.

(c) The Florida scale which is complained of, when compared with other like commodities which usually take the same rates, show the same disparity; for instance, the rate on brick begins at 3¢ for the distance of 5 miles, while the rate on logs is 1.71¢ for the same distance and at 170 miles the rate on brick is 10¢ per 100 pounds while the rate on logs is 3.70. Even greater disparities are shown in the matters of lime, sand and cement.

Reference is made to exhibits 11, 18, 19 and 20 of the record before the Commission and to the testimony of the witness Perrin beginning at page 210 of the transcript.

(d) If the Florida intrastate scale on logs should be adopted for interstate application, the present revenue of $27.50 for a haul of 50 miles would be reduced to $11.55. This would represent less than one-half of the present in- [fol. 1232] terstate revenue and it would mean that the revenue per car on logs for this haul would be about one-third of the revenue on a similar haul on brick and considerably less than one-third of the revenue on sand, gravel or lime and less than one-fifth of the present revenue on cement.

(e) If the present intrastate log scale in Florida should be adopted for interstate application between Florida and Georgia, the per car revenue on logs under the present interstate scale would be reduced for a haul of 100 miles from

$38.50 to $14.30. This figure is less than one-third of the revenue derived for a similar movement of brick intrastate in Georgia, or on gravel, sand and lime, and about ¼ of the revenue derived on a similar movement of cement.

10

This intervenor avers that the contract between the Atlantic Coast Line Railroad Company and the Carpenter-O'Brien Company—which was filed as Exhibit #13 in the proceeding before the Commission contains the following clause:

"It is further mutually covenanted and agreed by and between the parties hereto, that this contract is made pursuant and subject to all of the laws of the United States and of the State of Florida, and that any change, amendment, alteration, or cancellation hereof, deemed, required or rendered necessary by any law of the United States, or the State of Florida, or by virtue of the judgment of any order of Court or Commission of competent jurisdiction, shall not be deemed a breach of the terms and conditions of this agreement."

Your intervenor avers that any change which is worked in the rates mentioned in the contract by the order of the Interstate Commerce Commission was anticipated by the parties themselves and such change is within the contemplation of the contract.

Your intervenor avers that under the terms of the contract with the Carpenter-O'Brien Company, referred to above, the rates known as the "Cummer Scale" were to be applicable until one billion (1,000,000,000) feet of timber has been cut. This, of itself, was an improper basis of rate [fol. 1233] making, and, this intervenor believes that the one billion feet has been either entirely cut or very nearly so.

Wherefore this intervenor prays that the bill be dismissed, and the prayers of the complainants be denied.

Georgia Public Service Commission, per Jas. A. Perry, Chairman. Jas. A. Perry, Atty. for Georgia Public Service Commission.

Duly sworn to by Jas. A. Perry. Jurat omitted in printing.

[fol. 1234] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Jan. 3, 1929

The Interstate Commerce Commission, defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I and II of the bill of complaint, the Commission admits, for the purpose of this suit, that the allegations therein contained are true.

[fol. 1235]

II

Answering paragraphs III to XXXIII, inclusive, of the bill of complaint, the Commission admits and alleges that it made the report and order dated August 2, 1928, referred to in paragraph XIII, a copy of which is attached to and made a part of the bill of complaint as Appendix A; that said report and order were made and entered in a proceeding before the Commission entitled Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, docket No. 18364, and said report is published at 146 I. C. C. 717-725; that the Commission refers the court to the text of said report and order for full, complete, and accurate information concerning the contents of said report and order and for a description of the proceedings before the Commission upon which the report and order were and are based; that in said proceedings the petitioners herein, Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company were, and each of them was, accorded a full hearing; that at hearings in said proceeding a large volume of testimony and other evidence

bearing upon the matters covered by said report and order was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of petitioners herein by their counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of petitioners by their counsel, whereupon the Commission determined said matters and entered and served upon the parties to said proceeding the aforesaid report and order of August 2, 1928; that said report and [fol. 1236] order included the Commission's findings of fact, decisions, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said order is based.

The Commission further alleges that the findings and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the Commission in said proceeding as aforesaid.

The Commission further alleges that, in making said report, it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said proceeding by their counsel, including matters covered by the allegations of the bill of complaint herein.

The Commission further alleges that said order of August 2 was not made or entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

III

Further answering paragraphs XVII to XXXIII, inclusive, of the bill of complaint, the Commision denies that said order of August 2 is either unlawful or void for the

reasons, or for any of the reasons, set forth in said para-
[fol. 1237] graphs. The Commission particularly denies that the petitioners, and denies that any of the petitioners, will suffer either irreparable damage or irreparable injury, as stated in paragraph XXXI of the complaint, unless said order of August 2 is enjoined and set aside by the court.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and order of August 2, which report and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, of Counsel.

[fol. 1238] *Duly sworn to by Balthasar H. Meyer. Jurat omitted in printing.*

[fol. 1239] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONSOLIDATING CAUSES—Jan. 3, 1929

On motion of Charles E. Cotterill, of counsel for the plaintiffs herein,

It is ordered that the above numbered and entitled causes be, and the same are hereby consolidated for the purpose of trial.

[fol. 1240] Minute entries of argument and submission omitted in printing.

[fol. 1241] Item No. 8, of the Præcipe. (Omitted from this transcript.)

NOTE.—Certified copy of Transcript of Record of the Evidence and Proceedings before the Interstate Commerce Commission in the matter entitled No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, offered in evidence by counsel for all the Complainants jointly in Nos. 514, 511 and 512, and so received, (or in lieu thereof any narrative statement of the record of evidence agreed upon by the parties, and/or approved by the Court).

[fols. 1242-1250] Opinion omitted; printed side page 56 ante.

[fol. 1251] IN UNITED STATES DISTRICT COURT

In Equity. No. 511

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, and CUMMER CYPRESS COMPANY, Complainants,

vs.

THE UNITED STATES and THE INTERSTATE COMMERCE COMMISSION, Defendants

DECREE—Filed Jan. 17, 1929

This case was submitted for final decree to a court of three judges, to-wit: Hon. Richard W. Walker, United States Circuit Judge, Hon. Benjamin C. Dawkins, United States District Judge, and Hon. Samuel H. Sibley, United States District Judge. After hearing evidence and argument, and the Court being fully advised, it is, for the reasons stated in an opinion this date filed, considered and decreed that the relief prayed by the complainants be denied and the bill be dismissed.

This 17 day of January, 1929.

R. W. Walker, United States Circuit Judge. Ben C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

[File endorsement omitted.]

[fol. 1252] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR REHEARING—Filed Feb. 21, 1929

To the Honorable Judge of the District Court in and for the Northern District of Georgia, Atlanta Division, in chancery sitting:

Now comes Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company by their undersigned Solicitors of Record and file and present this their Petition for Rehearing in the above entitled cause, and as grounds therefor assert the following:

1. (a) That prior to October 5th, A. D. 1928, the Atlantic Coast Line Railroad Company, purporting to comply with the order entered August 2nd, 1928, by the defendant, Interstate Commerce Commission and sought to be enjoined, set aside and annulled in this proceeding, did file with said Interstate Commerce Commission its Supplement #10 to J. H. Glenn's Agent's Southern Lumber Tariff I. C. C. A-659, wherein and thereby the said Railroad Company purported to cancel throughout the State of Florida, the scale of rates for many years in force and effect under the laws of the State of Florida for the transportation of logs, except cedar, and to put into effect on October 10th, 1928, between all points on its lines in intrastate traffic within the State of Florida, the same rates prescribed by the order of said Interstate Commerce Commission for application from all points on the lines of said Railroad Company in said State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, Florida, to destinations on its lines in the State of Georgia.

[fol. 1253] (b) That prior to October 5th, A. D. 1928, said Railroad Company likewise purporting to comply with the order of said Interstate Commerce Commission, did file with said Interstate Commerce Commission, its Supplements 4, 5, 6 and 7 to its Florida local Tariff No. 20, I. C. C. B-2466 and preceding issues thereof, wherein and whereby the said Railroad Company purported to cancel throughout the State of Florida, the scale of rates for many years in force and effect under the laws of Florida for the intrastate

transportation of "ash, gum, hickory, oak, pine and cypress logs not over six feet in length", in carload quantities (hereinafter sometimes referred to as Short Logs), and to put into effect on October 10th, 1928, between all points on all of its lines in intrastate traffic within the State of Florida, rates substantially equivalent to the rates prescribed by the order of said Interstate Commerce Commission for the transportation of logs, except walnut, cherry and cedar, from all points on its lines in and State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Georgia.

(c) That the said rates so prescribed by the August 2nd, 1928 order of said Interstate Commerce Commission for application north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destination in the State of Georgia, were materially higher than the said Florida intrastate rates established under and pursuant to the Laws of Florida for the transportation of logs except cedar, and materially higher than the rates established under and pursuant to the Laws of Florida for the intrastate transportation of Short Logs as aforesaid.

(d) That such proceedings were had before the Interstate Commerce Commission so that the respective effective dates of so much of said order fixing rates for the transportation of logs intrastate between points in Florida, and the alleged cancellation of said intrastate rates on logs and short logs, and of the alleged application of the new rates sought to be established in lieu thereof, were postponed until February 8th, 1929.

2. That on the 17th day of January, A. D., 1929, this Court made and rendered its decision, opinion and decree in this cause; and in said decree specifically made its decision and opinion a part thereof. That in and by said de- [fol. 1254] cree, this Court construed "Said Order", in so far as the same was applicable to Intrastate rates in Florida, as limited to the territory specifically referred to by said Interstate Commerce Commission in fixing interstate rates from points in Florida to destinations in Georgia. That such construction and limitation was confined to one-way traffic north bound, in one direction only, from points

of origin north of and including Burnett's Lake, Florida, situate upon the line of the Atlantic Coast Line Railroad, which extends northwardly from said Burnett's Lake, Florida, through High Springs, Florida, through Baker's Mill, Florida, to and beyond Dupont, Georgia; and from points of origin north of and including Gainesville, Florida, upon the line of said Atlantic Coast Line Railroad, which extends northwardly from Gainesville, Florida, through Burnett's Lake, Florida, through Jacksonville, Florida, to and beyond Folkston, Georgia. That said order of August 2, 1928 with such construction and limitation was then upheld, and this Court in its decision and decree in substance, held said Interstate Commerce Commission intended to limit the intrastate rates prescribed in said order of August 2, 1928, to the territory specifically referred to therein for the fixing of interstate rates, which territory was described in this Court's opinion and is in this paragraph specifically set forth.

3. That after the rendition and entry of the decision, opinion and final decree of this Court herein the State of Florida, acting by and through its regulatory administrative body, to-wit: the Railroad Commission (hereinafter sometimes called Florida Commission), recognized that the said decision, opinion and decree was the law of the land unless and until the same was modified, set aside or reversed, and on to-wit: the 30th day of January, 1929, did make and cause to be entered in the records of said Florida Commission an order wherein and whereby it was declared and decreed that so long as the said decision, opinion and decree of this Court should remain in force and unreversed, the rates prescribed by said order of said Interstate Commerce Commission for the transportation in one direction, northbound, of logs under the following tariff description, to-wit: "logs, except walnut, cherry and cedar, it carload quantities minimum weight 40,000 pounds" from points on [fol. 1255] the lines of said Railroad Company in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations on its lines in the State of Georgia, would on and after February 8th, 1929, supersede the Florida intrastate scale of rates condemned by said Interstate Commerce Commission in so far as said Florida intrastate scale of rates applied to the

transportation of logs, except cedar, moving northbound, in one direction, from points of origin on the lines of the said Railroad Company north of Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Florida for distances not exceeding 170 miles.

3. And having so recognized the binding force and effect of the order of said Interstate Commerce Commission as construed and limited by the decision, opinion and decree of this Court, the said order of said Florida Commission did declare that all existing Florida intrastate rates for the transportation of logs, except cedar, and for the transportation of Short Logs, should continue in force and effect except to the limited extent that such State rates were superseded by the scale of rates prescribed by the order of said Interstate Commerce Commission as limited, for application in territorial scope, in direction of movement and otherwise, by the decision, opinion and decree of this Court.

That a copy of the order No. 979 of the Florida Commission is hereto attached, marked Exhibit A, and made a part hereof.

4. That no rate on Short Logs was in issue in said proceedings before said Interstate Commerce Commission in Docket No. 18364 and said Interstate Commerce Commission, prior to January 31, 1929, disclaimed jurisdiction over rates for the transportation of Short Logs intrastate between points in Florida. That said decision, opinion and decree of this Court construed and limited the application of said order of said Interstate Commerce Commission in territorial scope and otherwise, as is set forth in said decision, opinion and decree and hereinabove set forth, yet, notwithstanding such fact, the said Atlantic Coast Line Railroad Company, to-wit: prior to January 31st, 1929, asserted and claimed that said order of said Interstate [fol. 1256] Commerce Commission was applicable to the transportation of Short Logs and was applicable to the transportation of logs, except walnut, cherry and cedar moving intrastate over all its lines in all directions from all points throughout Florida. That said Railroad Company declared its intention to demand, charge and collect, on and after February 8th, 1929, from all shippers of Short

Logs and all shippers of logs, except walnut, cedar and cherry, between all points on its lines in Florida, the same scale or rates prescribed by the order of said Interstate Commerce Commission for the transportation of logs from points in Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations in Georgia.

5. That under and pursuant to the Laws of Florida it is the duty of the Florida Commission in the name of the State of Florida, and in the Courts of the State of Florida, to enforce by injunction or otherwise, all intrastate rates established under and pursuant to the Laws of Florida except to the extent that such rates should have been superseded by the paramount Federal power. That pursuant to such duty, and on, to-wit: January 31st, 1929, there was filed in the Circuit Court in and for Duval County, Florida, in the name of the State of Florida, as Complainant, acting by and thru the said Florida Commission and the said Attorney-General, a certain Bill of Complaint against said Railroad Company as defendant, and wherein the relief sought was injunctions, temporary and permanent, enjoining and restraining said Railroad Company from demanding, charging or collecting on or after February 8th, 1929, any rates or charges higher than the existing Intrastate Rates for the transportation of logs, except cedar, in carload quantities, except from points of origin within the area to which this Court by its said decision, opinion and decree held said order of said Interstate Commerce Commission to be applicable; and to enjoin and restrain the said Railroad Company from demanding, charging or collecting on or after February 8, 1929, in intrastate traffic, the said scale of rates prescribed by said order of Interstate Commerce Commission except for the transportation, northbound, from points [fol. 1257] of origin within the area to which this Court held said order of August 2nd, 1928, to be applicable; and likewise to enjoin and restrain the said Railroad Company from demanding, charging and collecting on or after February 8th, 1929, any rates or charges higher than the existing intrastate rates on Short Logs moving intrastate in Florida between all points on the lines of said Railroad Company in Florida.

6. That thereafter, on February 4th, 1929, the said Railroad Company filed its Petition and Bond for the removal of the said last described suit, set forth in Paragraph No. 5 hereof, from the said State Court to the United States District Court for the Southern District of Florida but said State Court denied said Petition for Removal and retained jurisdiction of said cause and thereupon the said State Court issued said injunctions substantially as was prayed.

7. That thereafter to-wit: on February 5th, 1929, the said Interstate Commerce Commission by its order dated that day did amend its said order of August 2nd, 1928, so that said last described order, as amended, should expressly declare that Short Logs were not within the purview thereof.

A true copy of said order dated February 5, 1929, is hereto attached as Exhibit B, and made a part hereof.

8. That thereafter, on February 7, 1929, the said Atlantic Coast Line Railroad Company, as Complainant, did file in the United States District Court for the Southern District of Florida, its ancillary bill of complaint wherein the said A. S. Wells, R. S. Matthews and Marie C. Eaton, Members of the Railroad Commission of Florida, were named as defendants and wherein and whereby the said Railroad Company sought to effect a removal of said State Court suit to said United States District Court and also to enjoin the said A. S. Wells, E. S. Matthews and Mamie C. Eaton from proceeding further in the prosecution of said State Court suit; and also sought a decree of said United States District Court declaring that said injunction issued by said State Court to be null and void. And on said February 7, 1929, the said Railroad Company did present said ancillary bill to the Hon. W. B. Sheppard, Judge of the District Court [fol. 1258] of the United States for the Northern District of Florida, therefore lawfully assigned to and sitting as Judge for the Southern District of Florida, and did move said court to issue the temporary injunctions therein prayed.

9. That on, to-wit: February 7, 1929, the said Railroad Company did likewise file in the United States District Court for the Northern District of Florida its original bill of complaint wherein and whereby the said Railroad Company (notwithstanding the decision, opinion and decree of

this Court) did assert that the order of said Interstate Commerce Commission, dated August 2nd, 1928, required it to demand, charge and collect for the transportation of logs, except walnut, cherry and cedar, intrastate in Florida, from all points of origin on its lines in Florida to all destinations on its lines in Florida, moving in all directions, the same scale of rates as were prescribed by said order for application on interstate movements of logs except walnut, cherry and cedar, northbound, from all points of origin north of Jacksonville, Gainesville, Burnett's Lake and High Springs to destination in Georgia. And said Railroad Company in and by said bill, among other things, prayed that the said defendants therein named to be temporarily and permanently enjoined from interfering with the demanding, charging and collecting by it of the said last described rate between any point of origin on its lines in Florida and any destination on its line in Florida, in any direction.

That on the same day, to-wit, February 7, 1929, the said Railroad Company did present the last mentioned bill to the Hon. W. B. Sheppard, on Judge of said Northern District of Florida, and at the same time did move said Court to issue the temporary injunctions therein prayed.

10. That the said ancillary bill referred to in paragraph 8, above and the said bill referred to in paragraph 9 above were presented to the said Judge at one and the same time; that after the filing and presentation thereof and before any orders had been made by said Court thereon the said Interstate Commerce Commission, without notice to your Petitioner, on, to-wit: February 7, 1929, did make and direct to be published at 10 o'clock a. m. on February 8, 1929, a certain order, wherein and whereby said Interstate Com- [fol. 1259] merce Commission did so amend its said order of August 2, 1928, so that the same, as amended required said Railroad Company to apply the scale of rates for the transportation of logs, except walnut, cherry and cedar logs and except short logs, moving in carload quantities, between all points of origin in the State of Florida on the lines of said Railroad Company in all directions to all destinations on the lines of said Railroad Company, in Florida, the same as said scale of rates prescribed by said order of August 2,

1928, for application to the transportation interstate of such logs in such quantities from points north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs north bound to destinations in Georgia. That a copy of said order of February 7, 1929, is hereto attached, marked Exhibit C and made a part hereof.

11. That, afterwards, to-wit: on February 8, 1929, the said ancillary bill so filed by said Railroad Company in the said United States District Court for the Southern District of Florida and the said Bill so filed by said Railroad Company in the United States District Court for the Northern District of Florida were amended by said Railroad Company and answers and motions to dismiss were duly filed by your Petitioner to the said Bill and ancillary Bill as amended as aforesaid; and thereupon said United States District Courts respectively, did make and enter orders denying the said injunctions prayed by said bills, respectively, and dismissed both of said bills.

That on February 13th, 1929, the said United States District Court for the Southern District of Florida, upon the Petition of said Railroad Company, did allow an appeal from the decree of said last described Court to the United States Circuit Court of Appeals for the 5th Circuit and the said Appeal is now pending.

12. That while said order of February 7th, 1929 (Exhibit C), purports to be an amendatory order of the order of August 2nd, 1928, and was claimed to have been entered for the purpose of clarifying an alleged doubt that said Interstate Commerce Commission asserted had arisen, as to the [fol. 1260] territorial limits intended to be covered by that portion of its order of August 2, 1928, prescribing intrastate rates within the State of Florida, yet, nevertheless, said amendatory order of February 7, 1929, is in effect, and an attempt on the part of the Interstate Commerce Commission to retroactively conclude that intrastate rates "within and throughout the entire State of Florida, without exception," should be increased by said Order of August 2nd, 1928; and such order of February 7, 1929, was entered contrary to, and in derogation of this Court's decision, opinion and decree of January 17, 1929, and to repudiate such decree. That said order of February 7, 1929, was material,

was entered without notice, and said Interstate Commerce Commission was without power, authority and jurisdiction to make the same.

13. That said order of said Interstate Commerce Commission, as amended as aforesaid, insofar as it seeks to regulate intrastate rates in Florida, is null and void and of no force and effect for the several specific reasons set forth in your petitioners' bill of complaint heretofore filed herein, reference to which is hereby prayed as if the same was specifically set forth herein in hæc verba, and for said reasons and under said decision, opinion and decree of this Court ought to be wholly enjoined, set aside and annulled.

14. Your Petitioners herewith tenders and presents their supplemental bill in the nature of a bill of review wherein your petitioner- upon re-hearing seeks to restrain, enjoin, set aside, declare null and void and of no effect said order of the Interstate Commerce Commission of August 2nd, 1928, as amended by its order of February 7th, 1929.

Wherefore your petitioners pray as follows:

(a) That this Court entertain this Petition for rehearing.

(b) That the Final Decree of this Court entered January 17, 1929, be opened, vacated and set aside, and that a re-hearing be granted to your petitioner- herein.

(c) That your petitioners be permitted and allowed to file herein their supplemental bill in the nature of a bill of review which herewith is tendered and presented, to [fol. 1261] properly bring before this Court the new facts, matters and things herein specifically set forth, all of which are material and not cumulative; and all of which occurred after the rendition of this Court's decree on January 17, 1929; and had such facts, matters and things existed prior to January 17, 1929, a decree would have been entered in favor of your Petitioners.

(d) That the defendants, United States of America and Interstate Commerce Commission, and the Intervener, Georgia Public Service Commission, be ordered and required on a day certain to show cause why the prayers in this Petition should not be granted.

(e) That your Petitioners may have such other and further relief as to this Court may seem proper and the nature of the case may require.

And your Petitioners will ever pray, etc.

Edward P. Sanborn, Geo. L. Rutherford, H. P. Adair, H. P. Osborne, W. W. Mitchell, Solicitors for Petitioners. Chas. E. Cotterill, 505 Grant Building, Atlanta, Georgia; August G. Gutheim, Number Eight Jackson Place, Washington, D. C., of Counsel for Petitioners.

[fol. 1262] *Duly sworn to by J. S. Foley. Jurat omitted in printing.*

Exhibit "A" omitted; printed side page 92 ante.

[fols. 1263-1268] EXHIBIT "B" TO PETITION FOR REHEARING

At a session of the Interstate Commerce Commission, Division 4, held at its office, in Washington, D. C., on the 5th day of February, A. D., 1929.

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Upon further consideration of the record in the above entitled proceeding, and for good cause shown:

It is ordered, That the order heretofore entered in this proceeding on August 2, 1928, be, and it is hereby amended as follows: By inserting after "logs, except walnut, cherry, and cedar" in the second, third and fourth paragraphs of said order, the following: "and except ash, gum, hickory, oak, pine, and cypress logs not over six feet in length."

It is further ordered, That in all other respects said order shall remain in full force and effect.

By the commission, division 4.

George B. McGinty, Secretary. (Seal.)

[fol. 1269] EXHIBIT "C" TO PETITION FOR REHEARING

At a session of the Interstate Commerce Commission, Division 4, held at its office, in Washington, D. C., on the 7th day of February, A. D., 1929.

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Upon further consideration of our order heretofore entered in this proceeding on August 2, 1928, as amended by orders entered August 27th, October 19th, and November 30th, 1928, and February 5, 1929, and because of doubt that has arisen as to the territorial limits intended to be covered by that portion of said order of August 2, 1928, as amended, prescribing intrastate rates within the State of Florida;

It is ordered, That the said order of August 2, 1928, as amended, be, and it is hereby changed in language for the purpose of clarification as follows: In the fourth paragraph of said order of August 2, 1928, substitute for "within the State of Florida" the following: "within and throughout the entire State of Florida, without exception,".

By the Commission, division 4.

George B. McGinty, Secretary.

[fol. 1270] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL BILL OF COMPLAINT

To the Honorable Judge of the District Court in and for the Northern District of Georgia, Atlanta Division, in chancery sitting:

Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company, by their undersigned solicitors of record, bring this their Supplemental Bill of Complaint in the nature of a Bill of Review against the

United States of America and Interstate Commerce Commission, and thereupon your orators complaining say:

I

That heretofore, to-wit, on the 27th day of November, A. D. 1928, your orators filed in this same cause their Bill of Complaint (hereinafter sometimes called the "Original Bill") against the defendants herein, wherein and whereby your orators sought to annul, set aside and enjoin that part or parts of the order (hereinafter called "said Order") of the Interstate Commerce Commission entered by it on the 2nd day of August, A. D., 1928, in Docket #18364 entitled Georgia Public Service Commission vs. Atlantic Coast Line Railroad" (146 I. C. C. 717) insofar as "said Order" in anyway dealt with the Florida intrastate rates of the Atlantic Coast Line Railroad Company as affecting shipments of logs under such rates to your orators from their respective points of origin in Florida to their lumber mills in Florida as particularly described in said "Original Bill". [fol. 1271] That answers were filed by the defendants to said "Original Bill," and Georgia Public Service Commission was permitted to intervene and file its answer thereto.

That at the same time your orators filed their aforementioned Bill of Complaint, two other Bills of Complaint were filed against the defendants herein; one by the State of Florida and the other by The Wilson Lumber Company. In each of the two last mentioned Bills of Complaint the matter involved and the relief prayed for was substantially similar to that prayed for in and by your orators' "Original Bill." That upon your orators' "Original Bill" and said two other Bills of Complaint coming on to be heard, the same were consolidated for the purpose of final hearing; and after due and regular notice, final hearing was had at New Orleans, Louisiana, before Judge Sibley, Walker and Dawkins, testimony was taken and said cases submitted. That thereafter, on the 17th day of January, A. D. 1929, an opinion was handed down in said cases so consolidated and orders entered dismissing each of said original bills, which said orders of dismissal by specific reference made the opinion of this Court a part thereof.

The aforesaid proceedings above enumerated all appear of record in this Court, and reference thereto is hereby specifically prayed.

II

That in and by its opinion this Court, to hold "said Order" valid, construed "said Order" insofar as it was applicable to intrastate rates in Florida, as being limited to the territory specifically referred to by the Interstate Commerce Commission in "said Order", fixing interstate rates from points in Florida to destinations in Georgia, such construction and limitation being confined to one way traffic north bound from points of origin north of and including Burnett's Lake, Florida, situate upon the line of said Atlantic Coast Line Railroad Company which extends northwardly from said Burnett's Lake, Florida, through High Springs, Florida, through Baker's Mill, Florida, to DuPont, [fol. 1272] Georgia, and to one way traffic north bound from points of origin north of and including Gainesville, Florida, situate upon the line of said Atlantic Coast Line Railroad Company which extends northwardly from said Gainesville, Florida, through Burnett's Lake, Florida, through Jacksonville, Florida, to and beyond Folkston, Georgia. And thereupon and thereby "said Order" with such construction and limitation was upheld and said "Original Bill" dismissed.

III

That two other Supplemental Bills in the nature of Bills of Review are likewise being filed by The Wilson Lumber Company and by the State of Florida. That certain exhibits will be referred to and mentioned in each of such supplemental bills and likewise in this Bill. That only one set of exhibits will be filed in support of said three (3) Supplemental Bills, in order to avoid encumbering the record of said suits.

IV

(a) That prior to October 5th, A. D. 1928, the Atlantic Coast Line Railroad Company, purporting to comply with "said Order" entered August 2nd, 1928, by the defendant

Interstate Commerce Commission and sought to be enjoined, set aside and annulled in this proceeding, did file with said Interstate Commerce Commission its Supplement #10 to J. H. Glenn's Agent's Southern Lumber Tariff I. C. C. A-659, wherein and whereby the said Railroad Company purported to cancel throughout the State of Florida the scale of rates for many years in force and effect under the laws of the State of Florida for the transportation of logs except cedar, and to put into effect on October 10th, 1928, between all points on its lines in intrastate traffic within the State of Florida, the same rates which were prescribed by the order of said Interstate Commerce Commission for application northbound from points on the line of said Railroad Company in said State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, Florida, to destinations on its lines in the State of Georgia.

[fol. 1273] (b) That prior to October 5th, A. D. 1928, said Railroad Company likewise purporting to comply with the order of said Interstate Commerce Commission, did file with said Interstate Commerce Commission its Supplements 4, 5, 6 and 7 to its Florida local tariff No. 20, I. C. C. B-2466 and preceding issues thereof, wherein and whereby the said Railroad Company purported to cancel throughout the State of Florida the scale of rates for many years in force and effect under the laws of Florida for the intrastate transportation of "ash, gum, hickory, oak, pine and cypress logs not over six feet in length," in carload quantities (hereinafter sometimes referred to as Short Logs), and to put into effect on October 10th, 1928, between all points on all of its lines in intrastate traffic within the State of Florida, rates substantially equivalent to the rates prescribed by the "said Order" of said Interstate Commerce Commission for the transportation of logs except walnut, cherry and cedar, from all points on its lines in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Georgia.

(c) That the said rates so prescribed by the August 2, 1928, order of said Interstate Commerce Commission for application northbound from points north of and including

Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations in the State of Georgia, were materially higher than the said Florida intrastate rates established under *the* pursuant to the laws of Florida for the transportation of logs except cedar, and materially higher than the rates established under and pursuant to the laws of Florida for the intrastate transportation of Short Logs as aforesaid.

(d) That such proceedings were had before the Interstate Commerce Commission so that the respective effective dates of so much of said order fixing rates for the transportation of logs intrastate between points in Florida, and the alleged cancellation of said intrastate rates on logs and short logs, and of the alleged application of the new rates sought to be established in lieu thereof, were postponed until February 8th, 1929.

[fol. 1274] V

That after the rendition and entry of the decision, opinion and final decree of this Court herein, the State of Florida, in compliance therewith and recognizing that said decision, opinion and decree was the law of the land unless and until the same was modified, set aside or reversed, on, to-wit: the 30th *say* of January, 1929, did make and cause to be entered by the Florida Railroad Commission an order, wherein and whereby it was declared and decreed that so long as the said decision, opinion and decree of this Court should remain in force and unreversed, the rates proscribed by said order of said Interstate Commerce Commission for the transportation in one direction, northbound, to-wit, of "logs, except walnut, cherry and cedar, in carload quantities minimum weight 40,000 *points,*" from points on the lines of said Railroad Company in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destination- on its lines in the State of Georgia, would on and after February 8th, 1929, supersede the Florida intrastate scale of rates condemned by said Interstate Commerce Commission insofar as said Florida intrastate scale of rates applied to the transportation of logs except cedar moving northbound, in one direction, from points of origin on the lines of the said Railroad

Company north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Florida for distances not exceeding 170 miles.

VI

And having so recognized the binding force and effect of the order of said Interstate Commerce Commission as construed and limited by the decision, opinion and decree of this Court, the said order of said Florida Railroad Commission did declare that all existing Florida intrastate rates for the transportation of logs except cedar, and for the transportation of Short Logs, should continue in force and effect except to the limited extent that such State rates were superseded by the scale of rates prescribed by the order of said Interstate Commerce Commission as [fol. 1275] limited, for application in territorial scope, in direction of movement and otherwise, by the decision, opinion and decree of this Court,

That a copy of the order #979 of the Florida Commission is herewith tendered as Exhibit A, and made a part hereof.

VII

That no rate on Short Logs was in issue in said proceedings before said Interstate Commerce Commission in Docket #18364, and said Interstate Commerce Commission, prior to January 31, 1929, disclaimed jurisdiction over rates for the transportation of Short Logs intrastate between points in Florida. That said decision, opinion and decree of this Court construed and limited the application of "said Order" in territorial scope and otherwise, as is set forth in said decision, opinion and decree and as hereinbefore set forth, yet, notwithstanding such fact, the said Atlantic Coast Line Railroad Company, to-wit: prior to January 31st, 1929, asserted and claimed that "said Order" was applicable to the transportation of Short Logs and was applicable to the transportation of logs except walnut, cherry and cedar moving intrastate over all its lines in all directions from all points throughout Florida. That said Railroad Company declared its intention to demand, charge

and collect, on and after February 8th, 1929, from all shippers of Short Logs and all shippers of logs except walnut, cherry and cedar, between all points on its lines in Florida, the same scale of rates prescribed by the order of said Interstate Commerce Commission for transportation of logs from points in Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations in Georgia.

VIII

That under and pursuant to the laws of Florida it is the duty of the Railroad Commissioners, in the name of the State of Florida and in the Courts of the State of Florida, to enforce, by injunction or otherwise, all intrastate rates established under and pursuant to the laws of Florida, except to the extent that such rates should have been superseded by the paramount Federal power. That pursuant to such duty, and on, to-wit: January 31, 1929, there was [fol. 1276] filed in the Circuit Court in and for Duval County, Florida, in the name of the State of Florida, as complainant acting by and through the said Railroad Commissioners and the said Attorney General, a certain Bill of Complaint against said Railroad Company as defendant, wherein the relief sought was injunctions, temporary and permanent enjoining and restraining said Railroad Company from demanding, charging or collecting on or after February 8th, 1929, any rates or charges higher than the existing intrastate rates for the transportation of logs except cedar in carload quantities, except from points of origin within the area to which this Court by its said decision, opinion and decree, held "said Order" to be applicable; and to enjoin and restrain the said Railroad Company from demanding, charging or collecting on or after February 7, 1929, in intrastate traffic, the said scale of rates prescribed by "said Order," except for the transportation, northbound, from points of origin within the area to which this Court held "said Order" to be applicable; and likewise to enjoin and restrain the said Railroad Company from demanding, charging and collecting on or after February 8th, 1929, any rates or charges higher than the existing intrastate rates

on Short Logs moving intrastate in Florida between all points on the lines of said Railroad Company in Florida.

IX

That thereafter, on February 4th, 1929, the said Railroad Company filed its Petition and Bond for the removal of the said last described suit from the said State court to the United States District Court for the Southern District of Florida, but said State Court denied said Petition for Removal and retained jurisdiction of said cause, and thereupon the said State Court issued said injunctions substantially as was prayed.

A photostatic transcript of record in said State Court suit is herewith tendered as Exhibit B, and made a part hereof as is specifically set forth herein.

[fol. 1277]

X

That thereafter, to-wit, on February 5, 1929, the said Interstate Commerce Commission by its order dated that day did amend "said Order" of August 2nd, 1928, so that said last described order, as amended, should expressly declare that Short Logs were not within the purview thereof.

A true copy of said order of February 5, 1929, is herewith tendered as Exhibit C, and made a part hereof as if specifically set forth herein.

XI

That thereafter, on February 7, 1929, the said Atlantic Coast Line Company as Complainant, did file, in the United States District Court for the Southern District of Florida, its ancillary bill of complaint wherein the said A. S. Wells, H. S. Matthews and Marie C. Eaton, members of the Railroad Commission of Florida, were named as defendants and wherein and whereby the said Railroad Company sought to effect a removal of said State court suit to said United States District Court and also to enjoin the said A. S. Wells, E. S. Matthews and Mamie C. Eaton from proceeding further in the prosecution of said State court suit; and also sought a decree of said United States District Court declaring that said injunction issued by said State Court to

be null and void. And on said February 7, 1929, the said Railroad Company did present said ancillary bill to the Honorable W. B. Sheppard, Judge of the District Court of the United States for the Northern District of Florida, theretofore lawfully assigned to and sitting as Judge for the Southern District of Florida, and did move said Court to issue the temporary injunctions therein prayed.

XII

That on, to-wit: February 7, 1929, the said Railroad Companp did likewise file, in the United States District Court for the Northern District of Florida, its original Bill of Complaint wherein and whereby the said Railroad Company (notwithstanding the decision, opinion and decree of this Court) did assert that the order of said Interstate Commerce Commission dated August 2nd, 1928, required [fol. 1278] it to demand, charge and collect for the transportation of logs except walnut, cherry and cedar, intrastate in Florida, from all points of origin on its lines in Florida, moving in all directions, the same scale of rates as were prescribed by the said order for application on interstate movements of logs except walnut, cherry and cedar, northbound, from all points of origin on its lines north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations in Georgia. And said Railroad Company in and by said bill, among other things, prayed that the said defendants therein named be temporarily and permanently enjoined from interfering with the demanding, charging and collecting by it of the said last described rate between any point of origin on its lines and any destination on its lines in Florida, in any direction.

That on the same day, to-wit February 7, 1929, the said Railroad Company did present the last mentioned bill to the Hon. W. B. Sheppard as Judge of said Northern District of Florida, and at the same time did move said Court to issue the temporary injunctions therein prayed.

XIV

That the said ancillary bill referred to is paragraph XI, above, and the said bill referred to is paragraph XII,

above, were presented to the said Judge at one and the same time; that after the filing and presentation thereof and before any orders had been made by said Court thereon, the said Interstate Commerce Commission, without notice to your orators, on to-wit: February 7, 1929, did make and direct to be published at 10 o'clock a. m. on February 8, 1929, a certain order, wherein and whereby said Interstate Commerce Commission did so amend "said Order" of August 2, 1928, so that the same as amended required said Railroad Company to apply the scale of rates for the transportation of logs except walnut, cherry and cedar logs and except short logs, moving in carload quantities, between all points of origin in the State of Florida on the lines of said Railroad Company in all directions to all destinations on the lines of said Railroad Company in Florida, the same as said scale of rates prescribed by "said Order" of August 2, 1928, for application to the transportation interstate of such logs in such quantities [fol. 1279] from points north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, Florida, northbound to destinations in Georgia.

A true copy of said Amendatory Order of February 7, 1929, is herewith tendered as Exhibit D, and made a part hereof as if specifically set forth herein.

That afterwards, to-wit: on February 8, 1929, the said ancillary bill so filed by said Railroad Company in the said United States District Court for the Southern District of Florida and the said bill so filed by said Railroad Company in the United States District Court for the Northern District of Florida were amended by said Railroad Company and answers and motions to dismiss were duly filed by your Orators to the said bill and ancillary bill as amended, as aforesaid; and thereupon said United States District Courts respectively did make and enter orders denying the said injunctions prayed by said bills, respectively, and dismissed both of said bills.

That complete copies of the record in each of said cases set forth in paragraphs number XI and XII are herewith tendered as Exhibits E and F and are made a part hereoof as if specifically set forth herein.

That on February 13th, 1929, the said United States District Court for the Southern District of Florida, upon the

Petition of said Railroad Company, did allow an appeal from the decree of said last described Court to the United States Circuit Court of Appeals for the 5th Circuit, and the said appeal is now pending.

XV

That the purpose, intent and effect of said order of the Interstate Commerce Commission of August 2, 1928, as amended by said order of February 7, 1929, is to refute and deny the construction and limitation placed upon the said order of August 2, 1928, by this Court prior to said amendment of February 7, 1929; and said order, as amended as aforesaid, constitute an attempt on the part of said Interstate Commerce Commission to fix and establish intrastate rates from all points of origin on the lines of said Atlantic [fol. 1280] Coast Line Railroad Company in Florida to all destinations on the lines of said Railroad Company in Florida in all directions.

XVI

That your orator brings this Supplemental Bill to set forth the new facts, matters and things that have occurred and taken place since this Court's decision, opinion and decree of January 17, 1929, and to enjoin, set aside, annul and suspend the report and "said Order" of the Interstate Commerce Commission of August 2nd, 1928, as amended by the order of February 7, 1929, insofar as such report and order as amended in any way dealt with the Florida intrastate rates of the Atlantic Coast Line Railroad Company as affecting shipments of logs under such rates to your orators from their respective points of origin in Florida to their lumber mills in Florida.

That report and "said Order" as amended as aforesaid with respect to the Florida intrastate rates on logs was and is arbitrary and unreasonable beyond the power of the Interstate Commerce Commission and wholly invalid and unlawful for the reasons following; among others, to-wit:

(a) Such report and "said Order" as amended as aforesaid are unlawful because under the facts of record in such

proceedings before the Interstate Commerce Commission there was no constitutional right or warrant for the exercise or attempt to exercise any federal power in derogation of or superior to the power and authority of the State of Florida in respect to the regulation of intrastate commerce sought to be affected by such order.

(b) Such report and "said Order" as amended as aforesaid are unlawful because there was no substantial evidence before the Interstate Commerce Commission, nor did that tribunal find that there was any substantial evidence before it showing or tending to show that there was or could by any undue or unjust preference or advantage of Florida shippers or communities, or any undue or unjust prejudice or disadvantage of Georgia shippers in violation of Sections 3 and 13 of the Interstate Commerce Act.

[fol. 1281] Such report and "Said Order" as amended as aforesaid are unlawful because the Interstate Commerce Commission has thereby sought to regulate internal concerns of the State of Florida as if unjust discrimination against interstate commerce in violation of Section 13 existed when there was not submitted to the Interstate Commerce Commission by any party to the proceedings before it any case or controversy of such character, and there was no other pending proceeding or order of investigation of such Commission involving any such subject matter.

(d) Such report and "Said Order" as amended as aforesaid are unlawful because there were no facts of record in such proceeding before the Interstate Commerce Commission showing, or tending to show, nor did the Interstate Commerce Commission find any facts sufficient to constitute unjust discrimination against interstate commerce in violation of the provisions of Section 13 of the Interstate Commerce Act.

(e) Such report and "Said Order" as amended as aforesaid are unlawful because thereby the Interstate Commerce Commission has sought to embrace within the scope thereof all rates of the Atlantic Coast Line Railroad Company on logs between any stations on its line wholly within the State of Florida for any length of haul, and in any portions of such State, although there was no case or controversy

submitted to that tribunal or pending before it involving in any way freight rates of the Atlantic Coast Line Railroad on logs within Florida except for hauls of 170 miles and less over such railroad and except for hauls of such length over such railroad wholly within the so-called northern portion of the State. Furthermore, there was no substantial evidence in such proceedings before the Interstate [fol. 1282] Commerce Commission showing or tending to show that all freight rates of the Atlantic Coast Line Railroad Company on logs over any portion of its line, wholly within the State of Florida, violated or would violate either Section 3 or Section 13 of the Interstate Commerce Commission Act. Therefore, such order unlawfully embraces within its territorial scope freight rates on logs between points within the State of Florida, as to which no case or controversy was submitted to the Interstate Commerce Commission and as to which no substantial evidence was directed.

(f) That said action of said Interstate Commerce Commission constitutes an unlawful invasion of the sovereign rights of the State of Florida reserved to it by the Constitution of the United States and of the citizens of said State of Florida, and is without any warrant or authority of or under the Constitution of the United States; and further, that the said Commission was and is without jurisdiction to enter its said order.

(g) That said action of the said Interstate Commerce Commission constitutes an unlawful exercise of power by the Interstate Commerce Commission and is without warrant or authority of or under the Constitution of the United States.

(h) That the Amended Order of February 7, 1929, attempted to retroactively conclude the rates on logs "within and throughout the entire State of Florida, without exception", should be increased by the order of August 2, A. D. 1929.

(i) That the amended Order of February 7, 1929, was material, was entered without notice, and said Interstate Commerce Commission had no power, authority or jurisdiction to make the same.

XVII

That "said Order" as amended as aforesaid required the Atlantic Coast Line Railroad Company to put into effect materially higher rates for the transportation of logs than those heretofore paid by your orators: that thereby irreparable damage and injury is being done to your ora- [fol. 1283] tors for that said materially higher rates have caused and are now causing your orators to suspend their logging operations, cease transporting logs, abandon their mill operations, planning on the relocation of their mills at the sources of the timber supply, involving the expenditure of millions of dollars; and that hundreds of people are being turned out of employment and that such damage to your orators and to the people thus becoming unemployed and to the public institutions of the State of Florida could not be compensated for by any suit or suits at law, and that your orators have no plain, adequate and complete remedy at law available to them.

Forasmuch, therefore, as your orators are without remedy save in a Court of Equity and to the end that the defendants, the United States of America and the Interstate Commerce Commission, and the Intervener, Georgia, Public Service Commission, and each of them, may, if they can, show why your orators should not have the relief herein prayed, and may full, true, direct and perfect answers make to this Supplemental Bill, to the best and utmost of their respective knowledge, remembrance, information and belief to each and every of the matters herein set forth, as if specifically interrogated.

Your orators would therefore pray:

First. That process may issue against the defendants, United States of America and Interstate Commerce Commission, and the Intervener, Georgia Public Service Commission, with service thereof and of this Supplemental Bill in the manner prescribed by statute in such cases made and provided.

Second. That this Honorable Court will grant to your orators an interlocutory order enjoining, setting aside and suspending the enforcement of such part or parts of said

order of August 2nd, 1928, of the said Interstate Commerce Commission as amended by said order of February 7th, 1929, affecting Florida Intrastate rates as alleged to be unlawful, and the operation and effectiveness of any rate [fol. 1284] or schedule of rate findings filed with said Interstate Commerce Commission in purported compliance therewith; and that such interlocutory order continue in force and effect until the further order of this Court.

Third. That upon final hearing this Court make and enter a decree and order enjoining, setting aside, annulling and suspending the enforcement of such part or parts of said order of August 2nd, 1928, as amended by the said order of February 7th, 1929, as hereinbefore described, affecting Florida intrastate rates alleged to be unlawful, and the operation and effectiveness of any rate or schedule of rate findings filed with the said Interstate Commerce Commission in purported compliance therewith.

Fourth. That your orators may have such other and further relief in the premises as to this Honorable Court shall seem meet and proper, and as equity and good conscience may require.

And your orators will ever pray, etc.

Edward P. Sanborn, Geo. L. Rutherford, H. P. Adair, H. P. Osborne, R. W. Mitchell, Solicitors for Complainants. Chas. A. Cotterill, Atlanta, Ga.; August G. Gutheim, 8 Jackson Place, Washington, D. C., of Counsel for Complainants.

[fol. 1285] *Duly sworn to by J. S. Foley. Jurat omitted in printing.*

Received in Clerk's Office Feb. 21, 1929.

[fol. 1286] Item No. 12 of the Præcipe

12. Supplemental Bill of Complaint, tendered by Complainants February 21, 1929, and filed on said date, together with the Exhibits therein mentioned and made a part thereof, said Exhibits being marked Exhibits A, B, C, D, E, and F to said Supplemental Bill.

NOTE.—Said Exhibits markes A, B, C, D, E, and F to said Supplemental Bill are the identical documents described respectively in Item 12 of the documents in No. 514 as Exhibits A, B, C, D, E, and F to the Supplemental Bill of Complaint of the State of Florida, et al., and are here incorporated by reference thereto.

Above mentioned Exhibits "A, B, C, D, E, and F" are omitted from this transcript.

[fol. 1287] IN UNITED STATES DISTRICT COURT

NOTICE OF APPLICATION FOR INJUNCTION—Filed Mar. 1, 1929

To the Attorney General of the United States, the Interstate Commerce Commission, the Georgia Public Service Commission:

You will hereby take notice that the complainant herein will present to the Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division, at New Orleans, Louisiana, an application for a temporary or interlocutory injunction or a temporary stay or suspension, restraining the United States of America and the Interstate Commerce Commission from enforcing a part of that certain order entered by the Interstate Commerce Commission on the 2nd day of August, 1918, in Docket No. 18364, and the amendment thereto of February 7, 1929, all of which is described in the original bill of complaint herein and in the supplemental bill of complaint in the nature of a Bill of Review and in the Petition for Rehearing, copies of which have been served upon you; and that said application will be heard at New Orleans, Louisiana, at 10 o'clock, A. M. on the 7th day of March, 1929.

Dated this — day of February, 1929.

Edward P. Sanborn, Geo. L Rutherford, H. P. Adair, H. P. Osborne, E. W. Mitchell, Solicitors for Complainants. Chas. E. Cotterill, August G. Gutheim, of Counsel for Complainants.

[fol. 1288] Service, by copy, of the within application and notice is hereby acknowledged this 26th day of February, 1929.

Elmer B. Collins, Special Assistant to the Attorney General, for the Attorney General of the United States. J. Stanley Payne, for the Interstate Commerce Commission. Jas. A. Perry, Chairman, for the Georgia Public Service Commission.

This Mch. 1st, 1929.

[fol. 1289] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ENTERTAINING PETITION FOR REHEARING AND TO SHOW CAUSE—Filed Feb. 1, 1929

This cause came on to be heard upon petition for a rehearing herewith presented, and it appearing to the Court that new and additional facts and matters have developed since this Court's decision and final decree entered herein on January 17, A. D. 1929, and it further appearing that the term of this Court at which said opinion and decree was entered has not expired, upon consideration,

It is, therefore, ordered and decreed:

1. That this Court does hereby entertain said Petition for re-hearing

2. That the defendants, the United States of America and Interstate Commerce Commission, and the Intervener, Georgia Public Service Commission, and each of them, be and they are each hereby ordered and required to show cause, if they can, on the 7th day of March, A. D. 1929, at New Orleans, La.

(a) Why the decree of this Court heretofore entered January 17, 1929 should not be opened, vacated and set aside.

(b) Why a re-hearing should not be granted herein.

(c) Why the complainant should not be permitted and allowed to file herein its supplemental bill in the nature of a bill of review tendered and presented with said Petition for re-hearing;

[fol. 1290] (d) Why the prayers of said Petition for rehearing, each and every, should not be granted.

3. That a copy of this Order and said Petition for rehearing be served upon the defendants, the United States of America and Interstate Commerce Commission, and the intervener, Georgia Public Service Commission.

Done and ordered this — day of February, A. D., 1929.
R. W. Walker, United States Circuit Judge. Sam'l H. Sibley, United States District Judge. Ben C. Dawkins, United States District Judge.

Received copy of the foregoing Order and likewise copies of the Petition for Rehearing and the Supplemental Bill mentioned therein and accept service thereof this the 26 day of February, A. D. 1929.
Elmer B. Collins, Special Assistant to the Attorney General, for the United States of America. J. Stanley Payne, for the Interstate Commerce Commission. Georgia Public Service Commission, by Jas. A. Perry, Chairman.

This Mch. 1, 1929.

[fol. 1291] In United States District Court

[Title omitted]

Return to Rule to Show Cause

Now comes the United States of America, defendant in the above entitled proceeding, and for its Return to Rule to Show Cause issued against it herein, says:

United States assents to (a) opening of the decree of this Court entered herein on January 17, 1929; (b) granting of a re-hearing herein; (c) the filing by Petitioner of its supplemental bill in the nature of a bill to review presented with its petition for rehearing.

United States further says, in response to the Rule to Show Cause, that in so far as the Court's said final decree herein dismissed Petitioner's original bill, said decree is

just, proper and correct and, therefore, should be affirmed upon rehearing, notwithstanding the new matters and things alleged in the supplemental bill. But, inasmuch as this Court, in dismissing said original bill, so construed the order of the Interstate Commerce Commission issued August 2, 1928, as to restrict and limit the state-wide scope and effect of said order, as affecting intrastate rates on logs transported by the Atlantic Coast Line Railroad Company, and thus, in effect, annulled said order to the extent of [fol. 1292] such restriction and limitation, United States prays that the Court, in reconsidering this cause, give full effect to said order by holding that it validly and lawfully requires said intrastate rates to be increased from and to all points on the Atlantic Coast Line Railroad Company's lines within and throughout the State of Florida, and, thereupon, affirm its decree dismissing said original bill.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

Received in Clerk's Office March 27, 1929.

[fol. 1293] IN UNITED STATES DISTRICT COURT

ANSWER OF THE UNITED STATES TO THE SUPPLEMENTAL BILL OF COMPLAINT

United States for answer to the supplemental bill filed herein against it says:

I

United States admits the allegations of paragraphs I, II, III and IV.

II

United States has not sufficient knowledge or information to form a belief concerning the allegations of paragraphs V and VI and, therefore, neither admits nor denies those allegations.

III

Answering paragraph VII United States admits that the Interstate Commerce Commission issued the order therein

described on February 15, 1929, in which it excepted from its order of August 2, 1928, the following, "ash, gum, hickory, oak, pine and cypress logs not over six feet in length." As to the other allegations made in said paragraph United States has not sufficient knowledge or information to form a belief and, therefore, neither admits nor denies them.

IV

United States has not sufficient knowledge or information to form a belief concerning the allegations in paragraphs VIII, IX, XI and XII, and as to them, therefore, it neither admits nor denies.

V

For answer to paragraph X United States says that the Interstate Commerce Commission on February 7, 1929, issued the order therein referred to and alleges that said order is in the following words:

Upon further consideration of our order heretofore entered in this proceeding on August 2, 1928, as amended by orders entered August 27th, October 19th, and November 30th, 1928, and February 5, 1929, and because of doubt that has arisen as to the territorial limits intended to be covered by that portion of said order of August 2, 1928, as amended, prescribing intrastate rates within the State of Florida.

It is ordered, That the said order of August 2, 1928, as amended, be, and it is hereby, changed in language for the purpose of clarification as follows: In the fourth paragraph of said order of August 2, 1928, substitute for "within the State of Florida" the following "within and throughout the entire State of Florida, without exception." [fol. 1294] United States, for answer to paragraph XVI (the copy of supplemental bill served upon the United States contains no paragraph numbered XIII), says it has no information, knowledge or belief as to whether, when, or how the ancillary Bill mentioned in paragraph XI or the Bill mentioned in paragraph XII were presented to the court alleged, or to any court.

Further answering said paragraph XIV United States says that the Interstate Commerce Commission on Febru-

ary 7, 1929, did make and issue the order mentioned in that paragraph which said order is quoted in paragraph V of this answer.

And for a further answer to paragraph XIV United States says that no further "investigation or proceeding whatsoever" was necessary or required by law or otherwise, preceding the issuance of the order of February 7, 1929, and that said order was merely a restatement and reiteration by the Interstate Commerce Commission of the requirement contained in its order entered August 2, 1928, directing the Atlantic Coast Line Railroad Company as follows:

It is further ordered, That said defendant be, and it is hereby, notified and required to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain rates for the transportation of logs, except walnut, cherry, and cedar, in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which shall be the same as those prescribed in the next preceding paragraph hereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia.

United States has not sufficient knowledge or information to form a belief concernnig the remaining allegations of paragraph XIV and therefore neither admits nor denies them.

VII

United States, answering paragraph XV, denies that the purpose, intent and effect of the order issued February 7, 1929, was or is "to refute and deny the construction and limitation placed upon the said order of August 2, 1928, by this Court;" and alleges that the purpose and intent of the order issued February 7, 1929, was to reiterate and restate beyond possible misconception that by its order of August 2, 1928, the Interstate Commerce Commission intended to and did require the Atlantic Coast Line Railroad [fol. 1295] Company to establish, publish and maintain the

intrastate rates in question throughout the State of Florida and not merely from and to intrastate points north of and including Jacksonville, Gainesville, Burnett's Lake, and High Spring.

VIII

United States denies each and every allegation made and contained in paragraph XVI. United States alleges, in further answer to paragraph XVI, that the order of August 2, 1928, as amended, was issued by the Interstate Commerce Commission upon complaint alleging, among other things, violations of Sections 3 and 13 of the Interstate Commerce Act, and upon its finding of fact made and entered upon the record before it that the intrastate rates complained of resulted in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce; and that the power thus exercised by the Interstate Commerce Commission in making said order is expressly granted to it by Sections 3 (1), 13 (4) and 15 (1) of said Act and does not constitute an unconstitutional or other unlawful invasion of the sovereign rights of the State of Florida.

IX

For answer to paragraph XVII, United States denies that complainants are suffering or will suffer irreparable, or other, legal injury or damage because of the enforcement of said order, as amended.

X

Except as herein expressly admitted, United States denies the truth of each and every allegation and conclusion contained in the supplemental bill in so far as they conflict either with the allegations herein, or with the statements or conclusions of facts included in said report and order of August 2, 1928.

Wherefore, having fully answered, defendant prays that the supplemental bill be dismissed at the cost of the com-

plainants and for such other and further order as may be [fol. 1296] appropriate.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

Duly sworn to by Elmer B. Collins. Jurat omitted in printing.

Received in Clerk's Office Mar. 27, 1929.

[fol. 1297] In United States District Court

[Titles omitted]

Order Granting Rehearing, etc.—March 7, 1929

The above numbered and entitled causes came on this day to be heard upon the petition filed on behalf of the complaintants for a rehearing herein and for leave to file a supplemental bill of complaint, and also, upon the motion of the Atlantic Coast Line Railroad Company for leave to intervene.

And, upon consideration thereof;

It is ordered that the petition of the complainants be granted, that the causes be re-opened and that complainants are permitted to file their supplemental bill of complaint herein.

It is further ordered that the motion of the Atlantic Coast Line Railroad Company be granted, and accordingly that the petition of intervention of said Atlantic Coast Line Railroad Company be filed of record.

[fol. 1298] Minute entries of argument and submission omitted in printing.

[fols. 1299 & 1300] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER REFERRING INTERVENTION TO TRIAL ON MERITS—Mar. 7, 1929.

Whereupon, after hearing argument of solicitors for the parties in interest, and on consideration thereof, it is ordered that the intervention herein, be referred to the trial of this case on the merits.

[fol. 1301] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR LEAVE TO INTERVENE

To the Honorable the Judges of the United States District Court for the Northern District of Georgia:

Now comes the Atlantic Coast Line Railroad Company, and respectfully represents unto this Honorable Court as follows:

(1) It is interested in the above entitled proceeding. It was the respondent in cause No. 18364 before the Interstate Commerce Commission, in which the Georgia Public Service Commission was the complainant. It is affected by the order of the Interstate Commerce Commission made in said cause and will be affected by any order which this court may enter thereunder.

(2) Wherefore petitioner prays that it be allowed to intervene in this cause.

Atlantic Coast Line Railroad Company, by F. B. Grier, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Its Attys.

The foregoing petition is granted and the Atlantic Coast Line Railroad Company is allowed to intervene in this cause.

This 7 day of March, 1929.

Sam'l H. Sibley.

Received in Clerk's Office March 27, 1929.

[fol. 1302] IN UNITED STATES DISTRICT COURT

[Title omitted]

To the Honorable the Judges of the District Court for the Northern District of Georgia:

PRELIMINARY MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY AS TO REHEARING

Now comes the Atlantic Coast Line Railroad Company, the Intervenor in the above mentioned cause, and before pleading to the merits of this case respectfully represents unto this court as follows:

1

The supplemental pleadings in this case show that on the 30th day of January, 1929, the Railroad Commissioners of Florida caused to be entered an order (No. 979) wherein and whereby they undertook to declare that all then existing Florida intrastate rates for the transportation of logs of the kind involved in this cause should continue in force and effect throughout the State, except to the very limited extent set out therein. The said order No. 979 purports to be effective over all the lines of the Atlantic Coast Line Railroad Company in the State of Florida for the trans-[fol. 1303] portation of logs, except cedar, moving northward in one direction from points of origin on the lines of the Atlantic Coast Line Railroad Company north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Florida for distances not exceeding 170 miles.

2

The supplemental pleadings also show that the Railroad Commissioners of Florida filed suit in the Circuit Court of Duval County, Florida, in the name of the State of Florida, wherein the Atlantic Coast Line Railroad Company has been restrained from enforcing any rates on logs in Florida except those set out in the said order No. 979 of the said Florida Railroad Commission, and that interlocutory injunction was granted thereon against the Atlantic Coast Line Railroad Company.

3

The supplemental pleadings further show that an ancillary bill was filed in connection with removal proceedings and the District Court of the United States for the Southern District of Florida denied to the Atlantic Coast Line Railroad Company an order restraining and enjoining the persons who are the Railroad Commission of Florida from enforcing the above mentioned injunction and dismissed this Intervenor's said ancillary bill.

4

The said supplemental pleadings also show that this Intervenor filed its bill in the United States District Court for the Northern District of Florida, seeking to restrain [fol. 1304] by injunction the enforcement of the said order No. 979 of the Florida Railroad Commission. The said bill was filed on the ground that said order was unconstitutional in that it conflicted with the commerce clause of the Constitution of the United States and the Acts of Congress made in pursuance thereof, especially the Act of Congress known as the Act to Regulate Commerce, approved February 4, 1887, and the amendments thereto, and particularly Section 13, sub-paragraph 4 thereof. The Judge of said United States District Court refused to call together three Judges for the trial of said cause, and dismissed Intervenor's said bill.

5

Intervenor alleges that the order of the United States District Court for the Southern District of Florida, above mentioned in the ancillary proceedings, has been appealed to the United States Circuit Court of Appeals for the Fifth Circuit, and a restraining order has been granted thereon until the further order of that Court, restraining the enforcement of the said order No. 979 and of the said order of the Circuit Court of Duval County, Florida, restraining the persons who are the Florida Railroad Commission from enforcing said order No. 979 and the said order of the Circuit Court of Duval County, Florida.

6

A motion to be allowed to file a petition for writ of mandamus has been filed by this Intervenor in the Supreme

Court of the United States, seeking a writ of mandamus to the Honorable, the Judge of the United States District Court for the Northern District of Florida, and to the [fol. 1305] State Court, requiring the Judge of said Court to call together two other Judges to his assistance to hear this Intervenor's said bill. The determination of Intervenor's motion has not yet been had, insofar as Intervenor is informed.

7

Intervenor alleges that this extraordinary and unusual condition has been brought about by the same complainants who are now seeking discretionary remedies from this Court, including the re-opening of the final decree dismissing their bill, and also seeking discretionary relief by injunction.

8

Intervenor alleges that said order of the Florida Railroad Commission was illegal; that the order of the Circuit Court of Duval County, Florida, was illegal; and the said order of the United States District Court for the Northern District of Florida was likewise illegal, for that the said Court, presided over by one Judge, had no jurisdiction to enter the order which was entered, and which is above referred to. Nevertheless, each of said orders and judgments is being relied upon by complainants, and neither judgment has been reversed.

9

Intervenor avers that it is impracticable for this Court to give full relief in this situation while the above mentioned proceedings remain in the condition above described. If the order of the Circuit Court of Duval County, Florida, remains in force this Intervenor is enjoined, and will continue to be enjoined, from complying with any order which this Court may make in this cause, except insofar as it may [fol. 1306] happen to coincide with that order. If the Florida Commission's order is in force the Interstate Commerce Commission's order cannot go into effect, except in the said limited territory. If the order of the District Court of the United States for the Northern District of Florida remains in effect this Intervenor is further embar-

rassed thereby. The complainants are thus seeking to impede the exercise of the jurisdiction of this court in the premises, unless that jurisdiction be exercised according to their conception of their rights.

10

This situation can be remedied by the act of the complainants.

11

Intervenor respectfully avers that the motion for rehearing and the supplemental pleadings of the complainants in this cause should not be considered by this court until the complainants have removed those things which embarrass this court in the determination of the subject matter.

Wherefore this Intervenor respectfully prays that this Honorable Court do grant the petition to reopen this case or to grant a rehearing, or to otherwise proceed therein, until the complainants shall have removed or caused to be removed the orders, judgments and decrees above referred to, or until they shall have done those things which may be required by this court, necessary to remove the conflict of jurisdiction which has been caused by the said proceedings; and that none of the prayers of the complainants be considered unless and until the conditions referred to be relieved by them.

Respectfully submitted.

F. B. Grier, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Counsel for Atlantic Coast Line Railroad Company.

Received in Clerk's Office March 27, 1929.

[fol. 1307] Answer of Atlantic Coast Line Railroad Company, Intervenor

In United States District Court

[Title omitted]

Now comes the Atlantic Coast Line Railroad Company, the intervener in the above entitled cause, and answers the

pleadings which are filed as a supplemental bill, and for answer says:

I

(a) This intervenor was the defendant in cause No. 18364 in the Interstate Commerce Commission in which the Georgia Public Service Commission was the petitioner.

(b) Intervenor owns and operates about 2,200 miles of rail line in the State of Florida; that it does business as a common carrier by railroad over its own lines in the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama. It operates about 5,100 miles of its own line of rail, and that it is engaged in interstate and intrastate common carriage by railroad.

[fol. 1308] (c) Intervenor admits the filing of the bill in the United States District Court for the Northern District of Georgia, as set out in paragraph I of the bill in this cause. The bill itself is referred to for its contents.

(d) It is admitted that answers were filed to said bill by the United States of America and the Interstate Commerce Commission, and that the Georgia Public Service Commission intervened and filed its answer.

(e) It is admitted that two other bills were filed at the same time and in the same court. It is admitted that there was a hearing in said cause as to set out in paragraph I of the bill in this case and that an opinion was handed down and that a decree was rendered dismissing each of the original bills. The decree and the opinion are referred to.

II

Intervenor denies the allegations of paragraph II of the bill in this case and more fully answers the same hereinafter.

III

Allegations of paragraph III of the bill require no answer.

IV

(a) Intervenor did file prior to October 5, 1928, with the Interstate Commerce Commission its tariff described in paragraph IV, sub-division "a" of the bill in this case, the object of which was to put into effect the rates prescribed by the Interstate Commerce Commission in its order entered August 2, 1928, in its aforementioned proceedings No. 18364. The said rates are now in effect. The said filing [fol. 1309] was made with the Interstate Commerce Commission in compliance with that Commission's order of August 2, 1928.

(b) This intervenor did prior to October 5, 1928, file with the Interstate Commerce Commission its tariffs, putting into effect in intrastate commerce the rates on short logs described in paragraph IV-B of the bill; the said filings have been cancelled as to such intrastate transportation on the logs described in said bill as short logs. This was done because of the order of the Commission entered in said cause on the 5th day of February, 1929, which order was to the effect that the said short logs were not within the terms of the said order of August 2, 1928.

(c) The rates on said short logs above referred to were higher than those which had theretofore appertained in Florida intrastate transportation over the lines of this intervenor.

(d) The effective dates of the new rates were postponed until February 8, 1929.

V

The allegations of paragraph V of the bill are denied except that on the 30th day of January, 1922, the Railroad Commissioners of Florida entered what they termed to be an order, effective instanter, which dealt with the subject matter of the transportation of logs. That action of the Florida Commissioners did not recognize that the decision, opinion or decree of this Court was the law of the land but it is and was in direct violation thereof and was in mis-application and in mis-use of the decision of this court and of the Interstate Commerce Commission. This will be further [fol. 1310] dealt with hereafter. The Florida Commis-

sioners had no power or authority to issue said writing and it was null from the beginning.

VI

The allegations of paragraph VI of the bill are denied except that the Florida Commissioners did enter a writing which they called their order No. 979, which writing this intervenor avers was not for the purpose of giving force or effect to any order of the Interstate Commerce Commission or of this Court but for the purpose of breaking down both; and if the said order No. 979 should become effective the result would be practically a complete nullification of the order of this Commission and of the said order of this Court entered on the 17th day of January, 1929. It would have left no traffic, or practically no traffic, to be affected by the order of the Interstate Commerce Commission.

VII

The allegations of paragraph VII as pleaded are denied. On the 5th day of February, 1929, the Interstate Commerce Commission issued its supplemental order, declaring, in effect, that the logs, which are sometimes referred to as short logs, were not affected by its order of August 2, 1928. Until that date there had been no official action of the Commission on the subject. When that action was taken by the Interstate Commerce Commission, intervenor immediately conformed thereto.

VIII

The allegations of paragraph VIII of the bill are denied as pleaded. It is not made the duty of the Railroad Commissioners to proceed in the name of the State of Florida, as is set out in said paragraph. There is a discretion con- [fol. 1311] ferred by statute in said Commissioners to a certain extent and in a certain way, as is mentioned in the statute. It is denied that the Railroad Commissioners of Florida proceeded in pursuance of any duty so imposed as is set out in said paragraph VIII. The Florida Commissioners did file a bill in the Circuit Court of Duval County, Florida, as is referred to in said paragraph, and this was done in their own name and in the name of the State of

Florida. The purpose of said bill was to enforce the aforementioned writing of the Commission called its order No. 979, which was void from its beginning, and to thereby annul for all practical purposes the said order of the Interstate Commerce Commission.

IX

It is true that this intervenor on the 4th day of February, 1929, filed in its petition and bond for the removal of said last described suit to the United States District Court for the Southern District of Florida and that the removal was denied by the State Court. Immediately thereafter this intervenor caused the record in said proceedings in the Circuit Court of Duval County, Florida, to be filed in the said United States District Court for the Southern District of Florida, and thereupon the Circuit Court of Duval County, Florida completely lost jurisdiction of the said cause by the proceedings to remove, if any it ever had. Notwithstanding that, the State Court did proceed and did issue an injunction restraining and enjoining this intervenor from complying with the order of the Interstate Commerce Commission. The said State Court had no jurisdiction of the said cause from the beginning because the subject matter of the suit was an effort to annul or suspend in whole or in part an [fol. 1312] order of the Interstate Commerce Commission over which it never had jurisdiction and its proceedings were utterly void.

X

Allegations of this paragraph X have been heretofore answered.

XI

It is admitted that an ancillary petition or bill was filed in the United States District Court for the Southern District of Florida against the members of the Railroad Commission of Florida, as is set out in paragraph XI, seeking to restrain and enjoin the members of the Railroad Commission from prosecuting the said suit in the Circuit Court of Duval County, Florida, and this intervenor did move the Court for a temporary restraining order and injunction, as is set out in said paragraph.

XII

This intervenor did on February 7, 1929, file in the United States District Court for the Northern District of Florida, its bill in which it did assert that the order of the Interstate Commerce Commission of August 2, 1928, did require it, and does require it, to demand, charge and collect for the transportation of logs of the kind mentioned in and covered by said order as construed by the order of February 5, 1929, and it further alleged that the writing called order No. 979 of the Florida Railroad Commissioners was void. Intervenor did seek a restraining order and injunction, as is set out in this paragraph. The said matter did come on for hearing before the Honorable Wm. B. Sheppard, Judge of the said District Court, on February 7, 1929.

[fol. 1313] XIII

There is no paragraph numbered XIII in said bill.

XIV

The ancillary bill referred to in paragraph XI of the bill and the bill referred to in paragraph XII were presented to Hon. Wm. B. Sheppard, Judge as aforesaid, at the same time. During the progress of the hearing of the said cause and on the 7th day of February, 1929, the Interstate Commerce Commission issued its order amending or clarifying its order of August 2, 1928, so that the rates intrastate on logs prescribed by the said order were made to apply over all of the lines of your intervenor in the State of Florida for intrastate transportation of such logs. On February 8, 1929, and during the progress of the trial of said cause, intervenor amended its bill so as to set out said order of the Interstate Commerce Commission of February 7, 1929, and thereupon answers and motions to dismiss, which were filed by complainants in this case, were made applicable to the bill as amended and the United States District Court did then deny the prayers of intervenor in both bills and did dismiss each of them. Appeals were taken on February 13, 1929, to the Honorable, the Circuit Court of Appeals for the Fifth Circuit, and on the 14th day of February, 1929, that Court entered its order restraining the appellee from en-

forcing the order of the Circuit Court of Duval County, Florida, hereinbefore referred to, and from enforcing the aforementioned writing called order No. 979 of the Florida Railroad Commission, the District Court having refused this relief. Said restraining order is in full force and effect and it is the only thing which prevents the utmost confusion [fol. 1314] over this subject matter and the conflict of the jurisdictions of the United States and of the State of Florida.

XV

The allegations of paragraph XV of the bill as pleaded are denied. The purpose of the order of the Interstate Commerce Commission of August 2, 1928, was to fix intrastate rates for transportation over the lines of the Atlantic Coast Line Railroad Company in Florida of logs of the kind covered by the said order and the report accompanying the said order. That order was made on ample evidence which not only justified the order but required its entry.

XVI

This intervenor denies that the order of the Interstate Commerce Commission of August 2, 1928, is void for any of the reasons set forth in this paragraph of said bill, and avers that said order of said Commission is valid and of full force and effect.

Further answering said paragraph, intervenor denies that said order of the Interstate Commerce Commission is void because of any matter or thing set out in sub-paragraphs A, B, C, D, E, F, G, H or I of the said paragraph XVI of said bill.

XVII

Intervenor denies the allegations of paragraph XVII of the supplemental bill, except that the order of the Interstate Commerce Commission does require the Atlantic Coast Line Railroad Company to put into effect materially higher rates for transportation of logs intrastate in Florida over its lines. Intervenor avers that this is necessary in order

to prevent undue, unreasonable and unjust discrimination [fol. 1315] against interstate commerce.

Further answering the supplemental bill this intervenor says:

XVIII

The order of the Interstate Commerce Commission was issued after an investigation and the taking of a good deal of evidence orally and by way of statistical data. Petition was filed by the Georgia Public Service Commission with the Interstate Commerce Commission in May, 1926, and an order was rendered on August 2, 1928. In the meantime evidence was taken before an Examiner of the Commission on October 20th, 21st and 22nd, 1926, at Valdosta, Georgia. Further evidence was taken in Jacksonville, Florida, before an Examiner of the Commission on January 18th, 19th, 20th and 21st, 1927. There were 53 exhibits offered and received in evidence. There were about 30 witnesses examined. The subject was investigated with great detail. Many shippers and carriers intervened in said cause and the Florida Railroad Commissioners appeared in defense of the then Florida rates which were in question.

XIX

Ample evidence was offered and received not only to justify, but to require, the order of the Interstate Commerce Commission; which order notified and required this intervenor to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain in intrastate commerce within the State of Florida those rates which this intervenor has put into effect and is [fol. 1316] maintaining on logs, except walnut, cherry and cedar, and which rates are otherwise described in the pleadings in this cause.

XX

The evidence before the Interstate Commerce Commission showed:

(a) That the Florida Commissioners had in writing stated that the rates in Florida which were complained of

were too low and were such as might be deemed confiscatory:

(b) That the rates which the Interstate Commerce Commission had ordered into effect in its order of August 2, 1928, are on substantially the same basis as the present rates under the scale prescribed by the Interstate Commerce Commission from points in South Carolina south of Columbia to Savannah, Georgia, and from South Carolina to destinations in North Carolina, and on logs from points on intervenor's line south of Charleston, South Carolina, to Savannah, Georgia:

(c) That the charges per car of 50,000 pounds on logs from Live Oak, Florida, to Jacksonville, Florida, 128 miles, were $16.00, while from the same point of origin to Waycross, Georgia, 83 miles, the charges on the same logs are $35.00. This illustration is only one of many illustrations covered by the evidence as to the disparity of rates interstate and intrastate:

(d) That the rate intrastate in Florida on logs under the Florida scale known as the Cummer Scale, which was the scale under attack in this case, was not so much as one-half of the rate on the same logs moving over intervenor's line from points in Florida to points in Georgia. To illustrate: The rate on a car of 50,000 pounds from Jasper, Florida, to [fol. 1317] Lake City, Florida, a distance of 69 miles, is $11.50 under the Cummer Scale, and from Jasper, Florida, to Valdosta, Georgia, a distance of 59 miles, the rate is $27.50;

(e) That the rates on logs in cars of 50,000 pounds covering interstate movements from points of origin in Florida to Georgia destinations were higher than the rates then applicable to the same transportation of the same commodity moving in the same circumstances intrastate in Florida over the lines of this intervenor by from 46% to 233%;

(f) That a manufacturer of lumber in Georgia who would draw his logs from Florida points would be at a disadvantage in the eastern markets by about $60.00 per car of lumber as compared with the Florida producer who got his logs in Florida and moved them the same distances under the same circumstances of transportation. The said east-

ern markets were desirable markets to the Florida and Georgia manufacturers.

(g) That a difference of $10.00 to $12.00 per car was a sufficient difference to keep a manufacturer of lumber thus discriminated against out of competition with the favored manufacturers;

(h) That the rates under said Cummer Scale were the lowest rates known to expert rate men for the transportation of logs anywhere in the United States;

(i) That the rates under the said Cummer Scale, that is the Florida intrastate scale complained of in said cause, are only from one-third to one-half of the rates on other commodities having like transportation characteristics, moving in similar circumstances, such as sand, gravel lime, cement and brick;

[fol. 1318] (j) That the rate complained of was very much less than the rate for the same class of transportation on any other line of railroad doing business in Florida;

(k) That there are 64 saw mills along this intervenor's line in Georgia within 170 miles of Florida. and that these mills cannot compete with the Florida producer of lumber in the eastern markets because of the difference in the rates on the inbound logs, which rates were the subject of investigation in said cause;

(l) That the amount of the burden on interstate commerce made by the unduly low rates on said intrastate shipments of logs in Florida under the said Cummer Scale of rates, which were under attack in said cause, would amount to several millions of dollars;

(m) That the volume of the traffic covered by the said logs was such that the discrimination against interstate commerce would continue for many years;

(n) That the difference in the rates under the Cummer Scale and in those under the properly established interstate scale applicable to logs moving over the lines of this intervenor was so great that the necessary commercial effect was to require the movement of logs in Florida to Florida manufacturing points, and to prevent the movement of said

logs to Georgia manufacturing points, although the circumstances of transportation were equally as advantageous to the Georgia manufacturing points:

(o) That the effect of the rates under the Cummer Scale was to undertake to preserve this advantage to intrastate commerce at the expense of interstate commerce;

[fol. 1319] (p) The evidence showed many other kinds of discriminations which were unjust and unduly prejudicial to interstate commerce; and also showed that the discriminations above pointed out were unjust, unduly prejudicial and unlawful.

XXI

Intervenor alleges that the so-called order No. 979 of the Florida Commissioners, which is set out in the supplemental pleadings as Exhibit "A" thereto, was unlawful because it dealt with a subject matter over which the said Commissioners had no jurisdiction, to wit: an order of the Interstate Commerce Commission, and it undertook to amend or annul said order in whole or in part. (The order of the Interstate Commerce Commission referred to being the one dated August 2, 1928.) Also, because it undertook to make an order in conflict with the said order of the Interstate Commerce Commission, and also because it undertook to apply its own construction of the said order, which construction was in conflict with the opinion rendered in this court on the same subject on the 17th day of January, 1929. In all events, the said order of the Florida Commissioners was unnecessary and unlawful.

XXII

The proceedings in the Circuit Court of Duval County, Florida, were unlawful and were null and void for the reason that the said court undertook to deal with a subject matter beyond its jurisdiction, that subject matter being the amendment or the annulling in whole or in part of the said order of the Interstate Commerce Commission. It was further null and void because the said cause had been removed to the proper United States District Court prior to the entry thereof.

[fol. 1320] XXIII

The said order of the Florida Commissioners, No. 979, and the said proceedings by the Florida Commissioners in the Circuit Court of Duval County, Florida, make a direct conflict between the authority of the Federal Government and the acts of those who are undertaking to enforce the powers of the State of Florida. Complainants herein are seeking and will seek to enforce said order.

XXIV

The rates for the intrastate transportation of logs in Florida prescribed as aforesaid by the Interstate Commerce Commission pursuant to lawful authority are the only lawful rates for such intrastate transportation of logs. Intervenor affirms that the said order #979 of the Florida Commission is unlawful and void and that the aforementioned order of the Circuit Court of Duval County, Florida, is also unlawful and void. Any order which this Court may make in this cause sustaining the order of the Interstate Commerce Commission should in order to afford completely effective relief to intervenor, enjoin the said Florida Commissioners and their counsel and employees from enforcing either the said order of the Florida Commissioners or the said order of the Circuit Court of Duval County, Florida.

XXV

Wherefore intervenor prays:

(1) That the prayers of the complainants be denied;

(2) That the Interstate Commerce Commission's order dated August 2, 1928, effective over all of the lines of this intervenor in the State of Florida, without exception, be held to be valid;

(3) That this court do those things and enter such orders [fol. 1321] and decrees as may be necessary or proper to make effective the said order of the Interstate Commerce Commission; and that it issue such restraining orders and injunctions, restraining and enjoining the complainants, who are the Florida Railroad Commissioners, and their at-

torneys and agents, from making or enforcing any order, rule, rate of regulation in conflict with said order of the Interstate Commerce Commission, and also from enforcing any order or decree of the Circuit Court of Duval County, Florida, heretofore entered or which may be entered, undertaking to interfere with the said order of the Interstate Commerce Commission;

(4) That all such orders, interlocutory and/or final, as may be necessary or appropriate to full relief in the premises be entered;

(5) Intervenor prays such other and further relief as may be mete and proper in the premises.

F. B. Grier, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Attorneys for Intervenor.

[fol. 1322] *Duly sworn to by Frank L. Glover. Jurat omitted in printing.*

Rec'd in Clerk's Office March 27, 1929.

[fols. 1323 & 1324] Orders of Interstate Commerce Commission omitted; printed side page 215 ante.

[fols. 1325–1328] Opinion on rehearing omitted; printed side page 217 ante.

[fol. 1329] In United States District Court

[Title omitted]

Final Decree on Rehearing—Filed April 22, 1929

In the above case, on petition of Complainants to open our former decree entered on January 7th, 1929, denying relief and dismissing the original bill, a rehearing was granted and said decree reopened, and thereupon the Atlantic Coast Line Railroad Company, on its petition, was

allowed to intervene in support of the order of the Interstate Commerce Commission of August 2nd, 1928.

The case was submitted for final decree on the reargument and rehearing, to a court of three judges, to-wit: Hon. Richard W. Walker, United States Circuit Judge, Hon. Samuel H. Sibley, United States District Judge, and Hon. Benjamin C. Dawkins, United States District Judge.

After hearing argument on the same evidence as at the first hearing, and the Court being fully advised:

It is, for the reasons stated in our opinion of March 22nd, 1929 (which opinion is duly filed as a part of the record), ordered, adjudged and decreed that the original and supplemental bill be and the same hereby is now dismissed and the relief prayed denied.

[fol. 1330] This 17th day of April, 1929.

R. W. Walker, United States Circuit Judge. Ben C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

[File endorsement omitted.]

[fol. 1331] In United States District Court

[Title omitted]

Petition for Appeal—Filed June 6, 1929

The Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company, complainants, feeling themselves aggreived by the final order or decree of the United States District Court for the Northern District of Georgia, dated April 17, 1929, and entered April 22nd, 1929, which denied the relief sought and dismissed the bill and supplemental bill, pray an appeal therefrom to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith. They pray that their appeal be allowed and that citation be issued as provided by law, and that the transcript of the record, proceedings and documents upon which said decree was based, duly

authenticated, be sent to the Supreme Court of the United States.

Geo. L. Rutherford, H. P. Adair, E. W. Mitchell, August G. Gutheim, Chas. E. Cotterill, Solicitors for Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company.

June 6th, 1929.

[fol. 1332] In United States District Court

[Title omitted]

Assignment of Errors—Filed June 6, 1929

Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company, complainants herein, by their respective counsel, now come and in connection with their Petition for Appeal file the following Assignment of Errors on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court herein, dated April 17, 1929, and entered April 22, 1929.

The District Court erred:

I

In denying the relief prayed, and in dismissing the bill and supplemental bill.

II

In failing and refusing to find that the report and order of the Interstate Commerce Commission of August 2, 1928, as amended February 7, 1929, constitute an unlawful exercise of power by said Commission and are without warrant or authority of or under the Constitution of the United States.

III

In failing and refusing to find that there is not and cannot be any interstate commerce in logs over the Atlantic

[fol. 1333] Coast Line Railroad from Florida origins to Georgia destinations on its line.

IV

In failing and refusing to find that the compulsory increase of the Florida intrastate rates on logs of the Atlantic Coast Line Railroad Company could not and did not result in the creation of interstate commerce in logs over the Atlantic Coast Line Railroad Company from Florida to Georgia.

V

In failing and refusing to find that there was no substantial evidence of record before the Interstate Commerce Commission showing or tending to show that substantially similar circumstances and conditions surrounded the transportation of logs by railroad on the one hand over the Atlantic Coast Line Railroad Company between points in Florida and on the other hand from origins on its line in Florida to destinations in Georgia.

VI

In failing and refusing to find that there was no issue or controversy under the issues as restricted and defined at the hearing before the Interstate Commerce Commission as to the question that the lower level of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company caused or would cause unjust discrimination against interstate commerce as such in violation of Section 13 of the interstate commerce act.

VII

In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are unlawful because said Commission has thereby sought to embrace within the scope thereof all rates of the Atlantic Coast Line Railroad Company on logs between any stations on its line wholly within the State of Florida for any length of haul, not exceeding 170 miles, and in any portion of such State, although there was no case or controversy

[fol. 1334] submitted to that tribunal or pending before it involving in any way freight rates of the Atlantic Coast Line Railroad Company on logs within Florida, except for hauls of 170 miles and less over such railroad wholly within the so-called Northern portion of the State of Florida.

VIII

In failing and refusing to find that the said order as amended is invalid because of its territorial scope, in that said order as amended fixes the intrastate rates on logs between all points on all the lines of the Atlantic Coast Line Railroad Company in Florida, whereas the intrastate rate investigation in said proceedings before the Interstate Commerce Commission was limited to movements of logs between points on only a portion of the lines of said Atlantic Coast Line Railroad Company located in only a small area situated in Northern Florida.

IX

In failing and refusing to find that there was no evidence whatsoever before the Interstate Commerce Commission supporting or tending to support the conclusion that the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company would subject interstate commerce to unjust discrimination in violation of Section 13 of the interstate commerce act.

X

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because they seek to interfere with the voluntary continuance of the Florida intrastate rates on logs over its line by the Atlantic Coast Line Railroad Company without any substantial evidence showing or tending to show that the continuance of such Florida intrastate log rates in any way violates the provisions of Sections 3 or 13 of the interstate commerce act, and without any request or petition by said Atlantic Coast Line Railroad Company by the Georgia [fol. 1335] Public Service Commission, or by any other party to either the Interstate Commerce Commission or to

the Florida Railroad Commission to increase such Florida intrastate log rates, and without any other effort whatsoever by said Atlantic Coast Line Railroad Company to increase said rate.

XI

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because there was no substantial evidence to support the finding that such Florida intrastate log rates are less than reasonably compensatory.

XII

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because the facts of record before the Commission do not show that there is or would be any real or substantial injury to or restriction upon interstate commerce as a consequence of the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company.

XIII

In failing and refusing to find that the report and order of the Interstate Commerce Commission constitute an unlawful invasion of the sovereign rights of the State of Florida reserved to it under the Constitution of the United States and of the citizens of the State of Florida and is without any warrant or authority of or under the Constitution of the United States, and, further, that said Interstate Commerce Commission was and is without jurisdiction to enter said report and order.

XIV

In failing and refusing to find that the issue as to whether the lower level of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company cause or would cause unjust discrimination against interstate commerce in violation of Section 13 when construed with Section 15a of [fol. 1336] the Interstate Commerce Act, was eliminated from the proceeding before the Commission by the parties thereto.

XV

In failing and refusing to find that the intrastate rates, investigated by the Interstate Commerce Commission, were not those contemplated by Section 13 (4) of the Interstate Commerce Act, as amended, because same were voluntarily initiated by the carrier, and therefore not "made or imposed by authority of any State," within the description of Section 13 (3) of said Act.

XVI

In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are unlawful because there were no facts of record in such proceeding before the Interstate Commerce Commission showing, or tending to show, nor did the Interstate Commerce Commission find any facts sufficient to constitute, unjust discrimination against interstate commerce in violation of the provisions of Section 13 of the Interstate Commerce Act.

XVII

In holding that the order of the Interstate Commerce Commission of August 2, 1928, as amended on February 7, 1929, was within the issues sought to be investigated by said Commission.

XVIII

In holding that said order of the Interstate Commerce Commission was made after a full hearing by said Commission.

XIX

In holding that the report and order of the Interstate Commerce Commission raising the state rate of the Atlantic Coast Line Railroad Company over its entire system in Florida on logs is justified in order to remove discrimination against general interstate commerce in that said Florida intrastate log rates are so low as to throw an undue burden on the revenues arising from interstate commerce.

[fol. 1337] XX

In the holding that "there was no territorial limitation in the complaint. No such limitation was put on the inquiry by any subsequent amendment or by any order of the Commission. * * * The rate was therefore in issue for all the purposes of Section 13, although there was no express prayer for its enhancement, and no express allegation that it was unprofitable to the carrier."

XXI

In holding that "in rejecting the conclusion of slight net income asserted by the witnesses, the Commission did not rule out the basic facts shown, but was at liberty to supplement them and construe them for itself, and make its own conclusion from them."

XXII

In holding that the Interstate Commerce Commission, in reaching its conclusions respecting the Florida intrastate rates on logs, was entitled to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions, and the railroads must have in such matters."

XXIII

In holding that "on the face of things the log rate is too low, and likely to burden the carrier."

XXIV

In holding that "we cannot say that the order is without evidence to sustain it, on the ground that the former state rate was an undue discrimination against general interstate commerce over the Coast Line Railroads."

XXV

In holding that the complainants in their reply to the exceptions of said Georgia Public Service Commission to the report of the examiner of the Interstate Commerce Commission failed to contend that the finding of said re-

port with respect to the burdensomeness of said rate was foreign to said investigation.

[fol. 1338] XXVI

In holding that the complainants in their application for a re-hearing before the entire Interstate Commerce Commission failed to contend that the burdensomeness of the Florida intrastate rate was foreign to the investigation had by said Interstate Commerce Commission.

XXVII

In failing to suspend, annul and permanently enjoin the Commission's order of August 2, 1928, as amended from time to time in order to extend the effective date thereof, and as changed in language for the purpose of clarification on February 7, 1928, insofar as said order applied to rates on the intrastate transportation of logs in Florida.

Wherefore complainants and each of them pray that the final order or decree of the District Court dated April 17, 1929, and entered April 22, 1929 be reversed and that the matter be remanded to said Court with instructions to suspend, annul and permanently enjoin said order of the Commission entered on August 2, 1928 (and changed in language for the purpose of clarification on February 7, 1929) in the proceeding before the Commission cited Georgia P. S. Commission v. A. C. L. R. R. Co., 146 I. C. C. 717, insofar as said order applied to the rates on the transportation of logs intrastate within the State of Florida over the lines of the Atlantic Coast Line Railroad Company.

Geo. L. Rutherford, H. P. Adair, E. W. Mitchell, August G. Gutheim, Chas. E. Cotterill, Solicitors and for Counsel for Complainants.

[fol. 1339] In United States District Court

[Title omitted]

Order Granting Appeal—Filed June 19, 1929.

The complainants having filed their petition for appeal herein the same is hereby granted and the complainants are hereby allowed to appeal said cause, and

It is ordered that said appeal be and the same is hereby entered to the Supreme Court of the United States upon the filing of a bond by said complainants in the sum of five hundred dollars ($500.00) with good and sufficient surety to be approved by this Court conditioned upon the said complainants prosecuting their appeal to effect, and answering all costs if they fail to make their plea good.

This 6th day of June, A. D. 1929.

R. W. Walker, United States Circuit Judge. Ben C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

[fols. 1340 & 1341] Bond on Appeal for $500.00, approved and filed June 13, 1929, omitted in printing.

[fols. 1342-1352] Præcipe for transcript of record—

[fols.1353-1357] Citation in usual form showing service on Elmer B. Collins et al., omitted in printing.

[fol. 1358] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 1359] [Caption omitted]

[fol. 1360] In United States District Court, Northern District of Georgia, Atlanta Division

In Equity. No. 512

Wilson Lumber Company of Fla,, Plaintiff,

vs.

United States of America, Defendant

Bill of Complaint—Filed Nov. 26, 1928

To the Honorable District Court of the United States for the Northern District of Georgia, Atlanta Division:

Plaintiff herein, Wilson Lumber Company of Fla., respectfully represents:

That it is a corporation organized under the laws of the State of Florida and engaged in the business of manufacturing lumber at its mills located at Ferry, Fla., in the State of Florida, on the line of the Atlantic Coast Line Railroad Company, about seventy miles south of the Florida-Georgia boundary line.

I

Plaintiff brings this suit in equity against the United States of America under an Act of Congress approved October 22, 1913, known as the District Court Jurisdiction Act, 38 Stat. L. 319, to enjoin, set aside and annul a certain order entered by the Interstate Commerce Commission, hereinafter called the Commission, on the 2d day of August, 1928, in a proceeding known as Docket No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, instituted by the Georgia Public Service Commission before the Commission.

[fol. 1361]

II

The said order of the Commission of August 2d, 1928, was entered by the Commission upon complaint of the Georgia Public Service Commission, a public tribunal of the State of Georgia, created by the laws of Georgia and having its legal residence in and being a resident of the Northern District of Georgia.

III

In its complaint filed with the Commission on May 3, 1926, the Georgia Public Service Commission alleged that the rates on logs, in carloads, from points in Florida to destinations in Georgia, were unjust and unreasonable and, as compared with rates on logs within the State of Florida, were unjustly discriminatory and unduly prejudical, causing undue and unreasonable advantage, preference and prejudice as between Florida shippers in intrastate commerce, on the one hand, and Georgia shippers in interstate commerce, on the other hand, and undue, unreasonable and unjust discrimination against interstate commerce.

IV

Thereafter the Commission held hearings on the issues raised and at such hearings the Atlantic Coast Line Railroad Company, while denying that the interstate rates maintained by it from points in Florida to points in Georgia were unreasonable or otherwise unlawful, proposed to established in lieu of the existing rates a certain scale of rates but said Atlantic Coast Line Railroad Company continued to deny that its rates within the State of Florida were in violation of any provision of the Interstate Commerce Act or were otherwise unlawful. After said hearings by an examiner of the Commission, the parties of record before the [fol. 1362] Commission filed their briefs and thereafter, on the 15th day of August, 1929, R. M. Brown, the examiner of the Commission who had presided at such hearings, filed his report and recommendations with the Commission, in which report he recommended the establishment of the rates proposed by the Atlantic Coast Line Railroad Company for application from points in northern Florida to points in Georgia, but recommended that no change be ordered in the Florida intrastate rates and that the complaint be dismissed insofar as it alleged discrimination between shippers in interstate commerce and shippers in Florida intrastate commerce, or discrimination against interstate commerce.

V

Thereafter exceptions were filed to the said report of the examiner of the Commission by the Georgia Public Service Commission and certain intervening railroads, to which replies were filed by the Florida Railroad Commission and other Florida interests. Thereafter, on the 16th day of December, 1927, the case was orally argued before Division 4 of the Interstate Commerce Commission.

On the 2d day of August, 1928, said Division 4 of the Commission handed down its opinion and entered its order. In its said opinion it found that the rates within the northern part of Florida unduly discriminated against shippers in interstate commerce from Florida to Georgia and unduly preferred shippers in intrastate commerce within the northern section of Florida.

The Commission further found that the existing rates from points in northern Florida to points in Georgia, for distances up to 170 miles, were unjust and unreasonable and prescribed in lieu of such rates the scale of rates proposed by the Atlantic Coast Line Railroad Company. The order of the Commission as to the rates from northern Florida to points in Georgia has been complied with and is not involved in this proceeding.

[fol. 1363] The Commission further found that the existing rates on logs in the northern part of Florida unduly discriminated against interstate commerce and ordered all of the log rates in the State of Florida over the lines of the Atlantic Coast Line Railroad Company to be increased so that they "shall be the same as those prescribed (in the next preceding paragraph hereto) as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia". A certified copy of the opinion and order of the Commission is filed herewith, as part hereof.

VI

The order of the Commission entered as aforesaid, was, by its terms, effective on or before the 10th of October, but by a subsequent order the effective date of so much of said order as required an increase in the log rates between points in the State of Florida, was extended to November 10, 1928, and by further order was extended to December 10, 1928. Numerous parties, including this plaintiff, filed petitions for a reopening of said case as to rates between points in Florida and for further argument and consideration, and filed briefs in support of said petitions, but the Commission, by an order entered on the 1st day of November, 1928, overruled and denied all of said petitions.

VII

Plaintiff further avers and charges that the said order of the Commission requiring an increase in the rates on logs between points in Florida, entered on the 2d day of August, 1928, the effective date of which has been postponed to the 10th day of December, 1928, is null and void and of no effect because same is in excess of the powers conferred upon the

Commission by law and is not supported by substantial evidence.

[fol. 1364] VIII

In its opinion, heretofore referred to, the Commission made the following finding:

"While complainant assails the rates from all points on defendant's lines in Florida to all points on its lines in Georgia, the record shows that insofar as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry and cedar, from that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, hereinafter referred to as north Florida, to destinations in Georgia for distances not exceeding 170 miles."

Altho the Commission confined its consideration and its findings to the above described restricted portion of Florida and its order as to interstate rates is confined to points in said restricted portion of Florida, yet the Commission by its order required the Atlantic Coast Line Railroad Company to increase its rates on logs as between all points on its line within the entire state of Florida.

IX

This plaintiff has a vital interest in the rates maintained by the Atlantic Coast Line Railroad Company, on logs from points in Florida to its mill at Perry, Florida, and all of said rates are required by the order of the Commission to be increased altho many of said rates apply from points south of Perry, Florida, which are not within the territory considered by the Commission, and from which the interstate rates to Georgia were prescribed and are not near the border, both Perry and said points south thereof being interior points.

X

The Commission found that the intrastate rates between points in the portion of northern Florida described by it, [fol. 1365] as above set forth, unduly discriminated against shippers in interstate commerce from such points to points

in Georgia but by its order required the Atlantic Coast Line Railroad Company, to increase all of its rates in Florida, whether within or without the restricted territory referred to, and altho applying between points within the interior of Florida, none of which are near the border between Florida and Georgia, and that in so doing the Commission undertook to regulate purely intrastate commerce and exceeded the powers vested in it by law and its order is therefore null and void and of no effect.

XI

Plaintiff further says that the finding of the Commission that the rates applying intrastate within the northern portion of Florida, above referred to, unduly discriminate against shippers in interstate commerce, was made without any substantial evidence to support same in that all of the evidence established that there was not and could not be any movement of logs from said northern portion of Florida to points in Georgia, nor was there any evidence to establish that if there should be any such movement it would be under substantially similar circumstances and conditions as the movement between points in Florida, and that said finding of the Commission is therefore arbitrary and is null and void.

XII

Plaintiff says that the Commission, after finding that any intrastate rates in Florida lower than the rates prescribed by it for application between points in northern Florida and points in Georgia "result, and will result, in undue preference and advantage to shippers of intrastate traffic within the State of Florida and undue prejudice to ship-
[fol. 1366] pers of interstate commerce from points in the State of Florida to points in the State of Georgia", further found that such intrastate rates in Florida would result "in unjust discrimination against interstate commerce."

XIII

Plaintiff says that in finding that the rates on the lines of the Atlantic Coast Line Railroad Company in the State

of Florida would result in unjust discrimination against interstate commerce, the Commission went beyond the issues presented to it by the parties, in that there was no contention on the part of the Georgia Public Service Commission or any intervenor that the rates within Florida cast a burden on interstate commerce or discriminated against interstate commerce as a whole, because, on the contrary, the Georgia Public Service Commission contended that the rates applicable within the State of Florida were just and reasonable rates and should be applied to interstate transportation.

XIV

Plaintiff says that there was no substantial evidence to support the finding that the intrastate rates in Florida were such as to cast a burden upon or discriminate against interstate commerce, as a whole, and that such finding of the Commission was made without any substantial evidence to support same and the order of the Commission based on such finding is arbitrarily made and is null and void and of no effect.

XV

Plaintiff further avers and charges that by its order requiring the Atlantic Coast Line Railroad Company to increase its rates on logs within the State of Florida, the Commission undertook to substitute its judgement as to [fol. 1367] what rates shall be charged for that of the carrier and deprived the plaintiff of the right to have the benefit of the exercise of the managerial judgement in fixing rates of the carrier serving it, all of which is beyond the power of the Interstate Commerce Commission, and therefore null and void.

XVI

Plaintiff further says that the rates on logs within the State of Florida over the lines of the Atlantic Coast Line Railroad Company have never been fixed by any state authority but are rates voluntarily established and maintained by the Atlantic Coast Line Railroad Company, and that the Interstate Commerce Commission is without power

to order such rates increased in the absence of some action by the Florida Public Service Commission or other authority in the State of Florida.

XVII

Plaintiff further avers and charges that it has invested more than $200,000 in its mills at Perry, Fla., and has arranged for the manufacture into lumber of large quantities of logs at its said mill, all of which logs will have to be transported by the Atlantic Coast Line Railroad Company; that the effect of the order of the Interstate Commerce Commission is to require that the rates upon which such logs will be transported to its said mill, be more than doubled and that it will be impossible for plaintiff to pay such rates and operate its mill except at heavy loss and that its ability to operate such mill and to continue its business will be seriously impaired, and that unless the enforcement of said order is by this Honorable Court enjoined, it [fol. 1368] will be irreparably injured and damaged in its business and will be deprived of its property by the enforcement of an unlawful order of the Interstate Commerce Commission.

XVIII

The premises considered and because plaintiff has no adequate remedy at law, plaintiff prays, therefore, that this Bill of Complaint be received and filed, that a writ of subpoena be issued by the Clerk of the Court, as provided by law, commanding the United States of America to appear and defend this action, that notice hereof be given to the Attorney General of the United States and to the Interstate Commerce Commission, and that upon the filing of this Bill the Judge of this Court call to his assistance two other judges, one of whom shall be a Circuit Judge, and that upon five days' notice of the time and place of hearing having been given to the Attorney General and the Interstate Commerce Commission, the plaintiffs be granted a temporary injunction restraining the Interstate Commerce Commission and the United States of America from enforcing the terms of said order requiring the Atlantic Coast Line Railroad Company to increase its rates on logs

between points in the State of Florida, and restraining said Atlantic Coast Line Railroad Company from complying with the aforesaid order requiring it to increase said rates; and that upon final hearing of this case a decree be entered adjudging the said order to be in all respects null and void and ordering the same to abrogated, cancelled and set aside, and permanently enjoining the Interstate Commerce Commission and the United States of America from taking any steps to enforce the said order; and that, in view of the fact that said order requires the Atlantic Coast Line Railroad Company, to increase said rates on or [fol. 1369] before the 10th day of December, 1928, pending the consideration of this application for a temporary injunction, a restraining order be entered to the same effect as the temporary injunction prayed for, and that plaintiffs be given such other further and general relief, as in equity and good conscience may seem meet.

J. V. Norman, Norman, Quirk and Graham, Attorneys for Plaintiff.

Duly sworn to by Alfred G. Wilson. Jurat omitted in printing. (All in italics)

[fols. 1370-1382] Exhibit; printed side page 19 ante.

[fol. 1383] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPLICATION FOR INTERLOCUTORY INJUNCTION OR SUSPENSION

To the Interstate Commerce Commission, the Attorney General of the United States:

Now comes the plaintiff, Wilson Lumber Company, of Fla., and moves the court to grant a temporary or interlocutory injunction, or a temporary stay or suspension upon the Bill filed herein enjoining or restraining the Interstate Commerce Commission and the United States of America from enforcing the terms of the order specifically set forth

in said Bill and entered by the Interstate Commerce Commission on the 2nd day of August, 1928, and the plaintiff respectfully represents that irreparable damage will otherwise ensue in this, to-wit:

That the order heretofore entered by the Interstate Commerce Commission, as set forth in the Bill herein filed, is null and void and of no effect; that if said order of the Interstate Commerce Commission is enforced, plaintiff will be greatly injured and damaged in its business and will be deprived of its property by an unlawful order of the Interstate Commerce Commission; that plaintiff in the premises has no adequate remedy at law; all of which facts and circumstances are more particularly set forth in the Bill herein filed.

That in support of this motion, plaintiff relies upon the record of the proceedings hereinbefore had and testimony taken therein before the Interstate Commerce Commission in Docket 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, a copy of which will [fol. 1384] be filed in this proceeding, and upon the allegation of the Bill filed herein, which Bill is sworn to and is to be treated as an affidavit in support of this allegation, and also upon additional affidavits which will be submitted in support of said application at a hearing thereon.

Plaintiff further moves that the court call to his assistance to hear and determine this application two other judges, of whom at least one shall be a Circuit Judge, as provided by the District Court Jurisdiction Act, so called.

J. V. Norman, Norman, Quirk & Graham, Attorneys for Plaintiff.

[fol. 1385] IN UNITED STATES DISTRICT COURT

NOTICE OF APPLICATION FOR INJUNCTION—Filed Nov. 28, 1928

To the Interstate Commerce Commission, the Attorney General of the United States:

You will hereby take notice that the plaintiff herein will present to the District Judge of the District Court of the United States for the Northern District of Georgia, At-

lanta Division, at Atlanta, Georgia, an application for a temporary or interlocutory injunction or a temporary stay or suspension, restraining the Interstate Commerce Commission and the United States of America from enforcing a certain order entered by the Interstate Commerce Commission on the 2d day of August, 1928, as specifically set forth in the Bill of Complaint herein, copy of which Bill is attached hereto, and in the written Motion, copy of which is also attached hereto, and that said application will be for hearing at Atlanta, Georgia, at 10 o' clock a. m., on the 3d day of December, 1928, or as soon thereafter the Court may hear the same.

Dated this 26 day of November, 1928.

Norman, Quirk and Graham, Attorneys for Plaintiff.

Service, by copy, of the within application and notice is hereby acknowledged this 26 day of November, 1928.

William J. Donovan, the Assistant to the Attorney General, for the Attorney General of the United States. Daniel W. Knowlton, Chief Counsel Interstate Commerce Commission.

[fol. 1386] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES—Filed Dec. 24, 1928

United States for answer to the bill of complaint filed herein against it says:

I

United States admits the allegations and conclusions of paragraphs I to VI, inclusive, of the bill of complaint.

II

United States denies the allegations and conclusions of paragraph VII of the bill of complaint.

III

United States admits paragraph VIII of the bill of complaint, except that it denies the allegation that "the Commission confined its consideration and its findings to the above described restricted portion of Florida."

Further answering said paragraph VIII, United States alleges that, as alleged in paragraph III of the Bill of complaint and hereinbefore admitted, the pleadings filed with and before the Interstate Commerce Commission raised the issue whether intrastate rates on logs "within the State of Florida," were unjustly discriminatory and unduly prejudicial as against Georgia shippers in intrerstate commerce, and unjustly discriminatory against interstate commerce.

[fol. 1387] IV

United States denies paragraphs IX and X of the bill of complaint, with this exception: it has no knowledge or belief concerning plaintiff's alleged interest in the rates maintained by the Atlantic Coast Line Railroad Company on logs from points in Florida to Perry, Florida.

Further answering said paragraphs, United States says that the Commission, in making its said report and findings therein, considered all rates assailed by the complaint filed with it, which alleged, among other things, that rates on logs applicable intrastate within Florida were unjustly discriminatory and unduly prejudic-al, and that the Atlantic Coast Line Railroad Company's Florida intrastate rates were unduly preferential of intrastate shippers in Florida, unduly prejudicial to interstate shippers from Florida to Georgia, and unjustly discriminatory against interstate commerce.

V

United States denies paragraphs XI, XII, XII, XIV, XV and XVI of the bill of complaint, and for a further answer to said paragraph XII, alleges that the Commission's finding therein quoted in part only, is on page 724 of said report, filed with and made a part of the bill of complaint, and reads as follows:

*

We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce.

VI

For answer to paragraph XVII of the bill of complaint, United States specifically denies that that unless the enforcement of said order is enjoined plaintiff will be irreparably injured and damaged in its business and deprived of its property; and further answering said paragrap*g* XVII, United States says that the matters and things therein alleged are irrelevant and immaterial, and are mere surplusage.

VII

Except as herein expressly admitted, United States [fol. 1388] denies the truth of each and every allegation and conclusion contained in the bill of complaint in so far as they conflict either with the allegations herein, or with the statements or conclusions of fact included in said report and order of August 2, 1928.

Wherefore, having fully answered, defendant prays that the bill of complaint be dismissed at the cost of the plaintiffs and for such other and further order as may be appropriate.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

[fol. 1389] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 1390] IN UNITED STATES DISTRICT COURT

PETITION FOR INTERVENTION AS DEFENDANT BY GEORGIA PUBLIC SERVICE COMMISSION—Filed Dec. 29, 1928

To the Honorable the Judges of the United States District Court for the Northern District of Georgia:

Now comes Georgia Public Service Commission and respectfully represents that it was the complainant before the Interstate Commerce Commission in the proceeding which resulted in the report and order which is the subject matter of the litigation in this cause.

Your petitioner desires to appear and be made a party defendant in the said cause and to be represented before this Court in the disposition thereof.

This petition is made in accordance with Section 213 of the Federal Judicial Code.

Respectfully submitted.

Georgia Public Service Commission, by Jas. A. Perry, Chairman. Jas. A. Perry, Att'y for Georgia Public Service Commission.

The foregoing petition of Georgia Public Service Commission is granted, this 29th day of December, 1928.

Sam'l H. Sibley, Judge United States District Court, Northern District of Georgia.

[fol. 1391] IN UNITED STATES DISTRICT COURT

ANSWER OF GEORGIA PUBLIC SERVICE COMMISSION—Filed Dec. 29, 1928

Georgia Public Service Commission, intervening defendant in the above entitled suit, now and at all times hereafter saving and reserving to itself all manner of benefit and advantage of exceptions to the many errors and insufficiencies in the complainant's bill of complaint contained, for answer thereunto and to so much or such part thereof as it is advised that it is material for it to answer, says:

I

Intervenor admits the allegations of paragraphs 1, 2, 3, 4, 5 and 6 of the bill.

VII

Intervenor denies the allegations of paragraph 7 of the bill.

VIII

The eighth paragraph of the bill undertakes to state and construe a part of the report and order of the Commission. These speak for themselves. The order is no broader than is necessary to prevent the Florida scale of rates called the "Cummer Scale" from unduly, unreasonably and unlawfully prejudicing interstate commerce.

IX

Intervenor admits that the complainant has an interest in the rates on logs in Florida, but denies that it has any property interest therein. It has an interest in the rate structure such as other shippers have, no more and no less. And intervenor denies that the Commission considered the rate structure in only a part of the State of Florida. The Commission considered the rate structure in the entire State and the report so shows.

X

Intervenor denies the allegations contained in paragraph 10 of the bill. The Commission found that the Cummer [fol. 1392] scale of rates unnecessarily burdens interstate commerce and unnecessarily works an unjust and unreasonable discrimination against the manufacturers of lumber who competed with the Florida manufacturers in interstate commerce.

XI

Intervenor denies the allegations of paragraph 11 of the bill.

XII

The allegations of paragraph 12 are admitted.

XIII

The allegations of paragraph 13 are denied.

XIV

The allegations of paragraph 14 are denied.

XV

The allegations of paragraph 15 are denied.

XVI

The allegations of paragraph 16 are denied.

XVII

Intervenor has not sufficient information to answer as to the investment of the complainant in mills at Perry, Florida, and as to the other matters and things alleged in said paragraph intervenor avers that the complainant has no right to a rate which is so unreasonably low as to be an unjust and unreasonable burden upon the Interstate Commerce Commission and to work an unjust and unreasonable burden upon the Interstate Commerce Commission and to work an unjust and unreasonable discrimination against shippers in interstate commerce. Intervenor denies that the complainant will be irreparably injured and damaged or that it will be deprived of its property by the enforcement of the order of the Commission.

Further answering the said bill, intervenor avers:

(1) That under the so-called Cummer scale of rates, that is the Florida intrastate log scale for not exceeding one hundred and seventy (170) miles, the Florida producer of [fol. 1393] lumber is given a great advantage over his competitor in the State of Georgia. To illustrate: for one hundred and seventy miles, the maximum distance of the Cummer scale, the Florida rate on a car of 50,000 pounds, is $18.50, and the interstate rate for the corresponding distance is $47.50. The Florida scale is less than one-half of the scale applicable in interstate commerce. The State of Florida, because of the nature of its traffic conditions, generally has higher rates than those which apply on the same commodities for similar distances in other States of the Southeast. The log rates prescribed by the Cummer scale

are the lowest in the Southeastern territory, and intervenor avers that it would be wholly impracticable for a Georgia producer of lumber to buy logs in Florida and have them carried to his mill in Georgia, for to do that would put a charge on the carriage, of about two and a half times as much as the charge would have been if the logs had moved a like distance under similar circumstances in the other direction to a Florida destination. The inevitable result of this is to prevent movements of logs from Florida into Georgia.

(2) Intervenor avers that the lumber which is manufactured in Georgia out of logs brought from Florida points of origin must bear a tariff or a tax or a charge or a burden commensurate with the aforementioned difference in the transportation of the logs out of which the lumber is manufactured; that this handicap on the Georgia industry is reflected by the large plants which are located in Florida as compared with those located in Georgia.

(3) Intervenor avers that the intrastate rates in Florida under the Cummer scale are so unreasonably low that they cannot be provided as rates on intrastate commerce in Georgia and in the event the Georgia producer hauls logs for a like distance from a point of origin in Georgia to his mill in Georgia, the same kind of burden will be placed upon the Georgia producer as if the logs had originated in Florida. So that when the Georgia lumber meets the Florida lumber in interstate competition, the Georgia manufacturer [fol. 1394] is placed at an unreasonable disadvantage in all circumstances.

(4) Intervenor avers that there is ample evidence to support all of the findings of the Commission; that this evidence consisted of oral testimony and of exhibits and statistics, all of which were introduced in a closely contested proceeding which consumed a number of days at each of the two hearings, and then another day in the oral argument before the Commission, besides the filing of briefs and the other motions for reconsideration and reargument, which are referred to in the bill.

(5) There was evidence to support the fact that there was standing timber available for purchase to be used for shipment out of the State of Florida and into the State of

Georgia. There was evidence to support the suggestion that pending this controversy, standing timber had been purchased by the Florida interests, which timber was then under negotiation by Georgia interests, and that this timber was to have been used to manufacture lumber in Georgia. Intervenor avers that it would be natural that the Florida lumber manufacturer should outbid the Georgia manufacturer for standing timber in Florida, because the Florida producer has the advantage of the Cummer scale, while the Georgia producer would be at the disadvantage of the interstate scale, to the extent hereinbefore indicated and more fully laid before the Commission.

(6) Intervenor avers that, if it be true that the complainants in this case and their associated companies who intervened in the cause before the Interstate Commerce Commission have acquired their monopolistic holdings in the standing timber in Florida indicated by the allegations of the bill and to such extent that there is now no more standing timber available for sale—that has been made possible by the existence of the Cummer scale and is one of the patent ills worked by the Cummer scale against interstate commerce.

(7) Furthermore, intervenor avers that if the scales of rates were upon equality, the self interest of the present [fol. 1395] holders of the standing timber in Florida, including the self interest of the complainants themselves, would dictate the sale of that timber to the mills in Georgia, which are nearer to that timber than are the mills in Florida.

(8) Intervenor avers that the mills in Florida having acquired large holdings of timber in circumstances which enable them through the Cummer scale to outbid competitors in the State of Georgia, seek to continue to hold an unjust and unreasonable advantage acquired through the misuse of transportation rates—all of which is prejudicial to interstate commerce and to the manufacturers of lumber in Georgia, and contrary to the statutes in such cases made and provided.

(9) (a) Intervenor avers that in 1921 it, in the discharge of its duties as a public service commission of Georgia,

undertook a revision of the Georgia intrastate rates of rail carriers.

The carriers submitted a scale of rates on forest products to be applied without transit and a scale of net rates to be applied on logs and other products under transit arrangements. At the time this was done the Georgia carriers announced their purpose to seek authority to adopt the scale thus submitted for uniform interstate application throughout their several systems to seek the authority of the various state commissions to make effective the same scale on intrastate traffic in other states as well as the State of Georgia.

The Georgia Commission did not approve the rates submitted, but after extensive hearings it issued, on April 25, 1925, an order to become effective June 1, 1925, prescribing certain rates on logs. Those rates, while lower than the scales submitted by the carriers, were somewhat higher than the existing rates in Georgia.

On May 29, 1925 the Georgia Commission suspended the rates prescribed on April 15, 1925 and a further hearing was held. At this rehearing the evidence was directed largely to the matter of discrimination in respect to which the Georgia Commission stated to the Georgia carriers as follows:

[fol. 1396] "The evidence submitted at the rehearing reveals what is, in the opinion of the Commission, an intolerable situation, as regards the rates in Florida, as compared with the interstate rates between Georgia and Florida, and the effect on this situation of the suspended rates authorized in the Commission's order" (Transcript, p. 210).

(b) To illustrate some of the unusual features of the Florida intrastate log rate which is complained of; that scale being at 1.71¢ per 100 pounds for a movement of 5 miles and the same rate continues through the 45 mile distance while the corresponding interstate rate begins at 2.5¢ for the 5 miles distance is graduated, being at 4¢ for 25 miles and 4.5¢ for 45 miles; at 170 miles the Florida rate is 3.70¢ per 100 pounds and the corresponding interstate rate is 9.5¢ per 100 pounds; 170 miles being the maximum distance to which this scale is applicable; the rate for 180 miles

becomes 8.33¢ per 100 pounds as compared with 3.7¢ per 100 pounds for 170 miles; the Florida intrastate rate on logs is very much less than its intrastate rate on short logs; the rate on short logs begins at 2.13¢ for 5 miles while on logs it begins at 1.71¢ and at 170 miles the rate on short logs is 6.25¢ and on logs it is 3.71¢.

(c) The Florida scale which is complained of, when compared with other like commodities which usually take the same rates, show the same disparity; for instance, the rate on brick begins at 3¢ for the distance of 5 miles, while the rate on logs is 1.71¢ for the same distance and at 170 miles the rate on brick is 10¢ per 100 pounds while the rate on logs is 3.70. Even greater disparities are shown in the matters of lime, sand and cement.

Reference is made to exhibits 11, 18, 19, and 20 of the record before the Commission and to the testimony of the witness Perrin beginning at page 210 of the transcript.

(d) If the Florida intrastate scale on logs should be adopted for interstate application, the present revenue of $27.50 for a haul of 50 miles would be reduced to $11.55. This would represent less than one-half of the present interstate revenue and it would mean that the revenue per car on logs for this haul would be about one-third of the revenue on a similar haul or brick and considerably less than [fol. 1397] one-third of the revenue on sand, gravel or lime and less than one-fifth of the present revenue on cement.

(e) If the present intrastate log scale in Florida should be adopted for interstate application between Florida and Georgia, the per car revenue on logs under the present interstate scale would be reduced for a haul of 100 miles from $38,50 to $14.30. This figure is less than one-third of the revenue derived for a similar movement of brick intrastate in Georgia, or on gravel, sand and lime, and about ¼ of the revenue derived on a similar movement of cement.

(10) This intervenor avers that the contract between the Atlantic Coast Line Railroad Company and the Carpenter-O'Brien Company—which was filed an Exhibit #13 in the proceeding before the Commission contains the following clause:

"It is further mutually covenanted and agreed by and between the parties hereto, that this contract is made pur-

suant and subject to all of the laws of the United States and of the State of Florida, and that any change, amendment, alteration, or cancellation hereof, deemed, required or rendered necessary by any law of the United States or the State of Florida, or by virtue of the judgment of any order of Court or Commission of competent jurisdiction, shall not be deemed a breach of the terms and conditions of this agreement."

Your intervenor avers that any change which is worked in the rates mentioned in the contract by the order of the Interstate Commerce Commission was anticipated by the parties themselves and such changes is within the contemplation of the contract.

Your intervenor avers that under the terms of the contract with the Carpenter-O'Brien Company referred to above, the rates known as the Cummer scale were to be applicable until one billion (1,000,000,000) feet of timber has been cut. This, of itself, was an improper basis of rate making, and, this intervenor believes the one billion feet has been either entirely cut or very nearly so.

Wherefore this intervenor prays that the bill be dismissed and the prayers of the complainants be denied.

Georgia Public Service Commission, per Jas. A. Perry, Chairman. Jas. A. Perry, Atty. for Georgia Public Service Commission.

[fol. 1398] *Duly sworn to by Jas. A. Perry. Jurat omitted in printing.*

[fol. 1399] IN UNITED STATES DISTRICT COURT

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed Jan. 3, 1929

To the Honorable the Judge of said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150, we hereby enter the appearance of the Interstate Commerce Commission, as a party defendant, and of ourselves as its counsel, in the above-entitled suit.

Daniel W. Knowlton, J. Stanley Payne.

[fol. 1400] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Jan. 3, 1929

The Interstate Commerce Commission, intervening defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiff's bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I, II and III of the bill of complaint, the Commission admits, for the purpose of this suit, that the allegations therein contained are true.

II

Answering paragraphs IV to XVIII, inclusive, of the bill of complaint, the Commission admits and alleges that it made the report and order dated August 2, 1928, referred to in paragraph V, a copy of which is attached to and made a part of the bill of complaint; that said report and order were made and entered in a proceeding before the Commis-[fol. 1401] sion, entitled Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, docket No. 18364, and said report is published at 146 I. C. C. 717-725; that the Commission refers the court to the text of said report and order for full, complete and accurate information concerning the contents of said report and order and for a description of the proceedings before the Commission upon which the report and order were and are based; that the plaintiff herein was not made a party to said proceeding either by its own intervention or otherwise and did not take part or appear therein, but after said report and order of August 2, 1928, were made and entered the plaintiff herein by petition dated September 25, 1928, petitioned the Commission for leave to intervene and for reconsideration and

reargument, which petition the Commission denied by order dated November 1, 1928; that at hearings in said proceeding a large volume of testimony and other evidence bearing upon the matters covered by said report and order was submitted to the Commission for consideration; that at said hearings and subsequently, both orally and in briefs filed in said proceeding, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of the parties thereto by their counsel, whereupon the Commission determined said matters and entered and served upon the parties to said proceeding the aforesaid report and order of August 2, 1928; that said report and order included the Commission's findings of fact, decisions, conclusions, orders and requirements in the premises, and that, upon the evidence aforesaid and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said order is based.

The Commission further alleges that the findings and conclusions on said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the Commission in said proceeding as aforesaid.

The Commission further alleges that in making said report it considered and weighed carefully in the light of its [fol. 1402] own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties in said proceeding by their counsel.

The Commission further alleges that said order of August 2 was not made or entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and that the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

III

Further answering paragraphs VII to XVIII, inclusive, of the bill of complaint, the Commission denies that said order of August 2 is either unlawful or void for the reasons, or for any of the reasons, set forth in said paragraphs. The

Commission particularly denies that the plaintiff will suffer either irreparable damage or irreparable injury, as stated in paragraph XVII of the bill of complaint, unless said order of August 2 is enjoined and set aside by the court.

Except as herein expressly admitted, the Commission denies the truth of each and of all the allegations contained in the bill of complaint in so far as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and order of August 2, which report and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain and prove as this honorable court shall direct, and hereby prays that said bill of complaint be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, of Counsel.

[fol. 1403] *Duly sworn to by Balthasar H. Meyer. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 1404] In United States District Court

[Title omitted]

Order Consolidating Causes—Jan. 3, 1929

On motion of Charles E. Cotterill, of counsel for the plaintiffs herein,

It is ordered that the above numbered and entitled causes be, and the same are hereby consolidated for the purpose of trial.

[fol. 1405] Minute entries of argument and submission omitted in printing.

[fol. 1406] Item No. 9 of the Præcipe

(Omitted from this transcript.)

NOTE.—Certified copy of Transcript of Record of the Evidence and Proceedings before the Interstate Commerce Commission in the matter entitled No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, offered in evidence by counsel for all the Complainants jointly in Nos. 514, 511 and 512, and so received (or in lieu thereof any narrative statement of the record of evidence agreed upon by the parties, and/or approved by the Court).

[fols. 1407-1415] Opinion omitted; printed side page 56 ante.

[fol. 1416] IN UNITED STATES DISTRICT COURT

In Equity. No. 5121

THE WILSON LUMBER COMPANY, Complainant,

vs.

THE UNITED STATES and THE INTERSTATE COMMERCE COMMISSION, Defendants

DECREE—Filed Jan. 17, 1929

This case was submitted for final decree to a court of three judges, to-wit: Hon. Richard W. Walker, United States Circuit Judge, Hon. Benjamin C. Dawkins, United States District Judge, and Hon. Samuel H. Sibley, United States District Judge. After hearing evidence and argument, and the Court being fully advised, it is, for the reasons stated in an opinion this date filed, considered and decreed that the relief prayed by the complainant be denied and the bill be dismissed.

This 17 day of January, 1929.

R. W. Walker, United States Circuit Judge. Ben. C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

[File endorsement omitted.]

[fol. 1417] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR REHEARING—Filed Feb. 21, 1929

To the Honorable Judge of the Distrcit Court in and for the Northern District of Georgia, Atlanta Division, in Chancery Sitting:

Now comes Wilson Lumber Company of Florida, by its undersigned Solicitor of Record, and files and presents this its Petition for Rehearing in the above entitled cause, and as grounds therefor asserts the following:

1. That on the 17th day of January, A. D. 1929, this Court made and entered its decision, opinion and decree in this cause wherein that certain Order of the Interstate Commerce Commission, dated August 2nd, 1928, entered in Docket #18364 entitled Georgia Public Service Commission versus Atlantic Coast Line Railroad Company (146 I. C. C. 717) was construed and limited in its Intrastate application for the transportation of logs, to northbound movements, in one direction only, from points of origin north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, for distances not exceeding 170 miles, all of which appears of record in this cause and reference thereto is hereby specifically prayed.

2. That thereafter on the 7th day of February, A. D. 1929, said Interstate Commerce Commission entered an Order purporting to be an Amendment to its order of August 2, 1928, wherein and whereby it declared and decreed that its order of August 2, 1928, insofar as the same pertained to intrastate rates, was applicable "within and throughout the entire State of Florida without exception."

A true copy of said order of February 7, A. D. 1929, is [fol. 1418] attached hereto as Exhibit "A", and made a part thereof.

3. That said order of August 2, 1928, as amended by said order of February 7, 1929, is null and void and of no force and effect for the several reasons contained in your petitioner's bill of complaint heretofore filed in this cause, to which reference is hereby prayed as if the same were specifically set forth herein; and said Order of August 2,

1928, as so amended by said order of February 7, 1929, ought to be wholly enjoyed, set aside, annulled and suspended.

4. Your Petitioner herewith tenders and presents its supplementary bill in the nature of a bill of review wherein your petitioner upon re-hearing seeks to restrain, enjoin, set aside, declare null and void and of no effect said order of the Interstate Commerce Commission of August 2, 1928, as amended by its order of February 7, 1929.

Wherefore your petitioner prays as follows:

(a) That this Court entertain this Petition for re-hearing.

(b) That the Final Decree of this Court entered January 17, 1929, be opened, vacated and set aside, and that a re-hearing be granted to your Petitioner herein.

(c) That your Petitioner be permitted and allowed to file herein its supplemental bill in the nature of a bill of review which herewith is tendered and presented, to properly bring before this court the new facts, matters and things herein specifically set forth all of which are material and not cumulative; and all of which occurred after the rendition of this Court's decree on January 17, 1929; and had such facts, matters and things existed prior to January 17, 1929, a decree would have been entered in favor of your Petitioner.

(d) That the defendants, United States of America and Interstate Commerce Commission, and the Intervener, Georgia Public Service Commission, be ordered and required on a day certain to show cause why the prayers in this petition should not be granted.

(e) That your Petitioner may have such other and further relief as to this Court may seem proper and the nature of the case may require.

And your Petitioner will ever pray, etc.

Norman, Quirk & Graham, Solicitors for Petitioner.

[fol. 1419] *Duly sworn to by George L. Rutherford. Jurat omitted in printing.*

[fol. 1420] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL BILL OF COMPLAINT

To the Honorable Judge of the District Court in and for the Northern District of Georgia, Atlanta Division, in Chancery sitting:

Wilson Lumber Company of Florida, a corporation by its undersigned Solicitors of Record, brings this, its Supplemental Bill of Complaint in the nature of a bill of review against the United States of America and Interstate Commerce Commission and thereupon your Orator complaining, says:

I

That heretofore, to-wit: on the — day of November, A. D. 1928, your Orator filed in this cause its Bill of Complaint against the defendants herein, wherein your Orator sought to annul, set aside and enjoin that part of an order of the Interstate Commerce Commission entered by it on the 2nd day of August, A. D. 1928, in Docket #18364 entitled "Georgia Public Service Commission vs. Atlantic Coast Line Railroad" (146 I. C. C. 717), whereby said Interstate Commerce Commission attempted to require Atlantic Coast Line Railroad to increase its Florida Intrastate Rates for the transportation of logs from and to all points in Florida.

That answers were filed by the defendants to said Bill, and Georgia Public Service Commission was permitted to intervene and file its answer thereto.

That at the same time your Orator filed its aforementioned Bill of Complaint, two other Bills of Complaint were filed against the Defendant herein; one by the State [fol. 1421] of Florida and the other by the Brooks-Scanlon Corporation, the Wilson Cypress Company and the Cummer Cypress Company. In each of the two last mentioned Bills of Complaint, the relief prayed for a substantially similar to that prayed for in and by your Orator's Bill. That upon your Orator's Bill, and said two other bills of Complaint coming on to be heard, the same were consoli-

dated for the purpose of final hearing; and after due and regular notice, final hearing was had at New Orleans, Louisiana, before Judges Sibley, Walker and Dawkins, testimony was taken and said cases submitted. That thereafter, on the 17th day of January, A. D. 1929, an opinion was handed down in said cases so consolidated and orders of dismissal by specific reference made the opinion of this Court a part thereof.

The aforesaid proceedings above enumerated all appear of record in this Court, and reference thereto is hereby specifically prayed.

II

That in and by its opinion, this Court, to hold said Order of August 2, 1928, valid, construed the same insofar as it was applicable to intrastate rates in Florida, as being limited to the territory specifically referred to by the Interstate Commerce Commission in "Said Order," fixing interstate rates from points in Florida to destinations in Georgia, such construction and limitation being confined to transportation north bound on the lines of the Atlantic Coast Line Railroad Company in Florida from points of origin north of and including Burnett's Lake, Florida, situate upon the line of said defendant, which extends northwardly from said Burnett's Lake, Florida, through High Springs, Florida, through Baker's Mill, Florida, to and beyond DuPont, Georgia, and likewise from points of origin North of and including Gainesville, Florida, upon the line of the defendant which extends through Burnett's Lake, Florida, and through Jacksonville, Florida, to and beyond Folkston, Georgia. And thereupon and thereby said order with such construction and limitations was upheld and your Orator's Bill dismissed.

III

That two (2) Supplemental Bills in the nature of Bills of Review are likewise being filed simultaneously by the State of Florida and by Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company. That certain exhibits will be referred to and mentioned in each of said supplemental bills and likewise in this Bill.

[fol. 1422] That only one set of exhibits will be filed in support of said three (3) Supplemental Bills, in order to avoid encumbering the record of said suits.

IV

That thereafter on the 7th day of February, A. D. 1929, said Interstate Commerce Commission entered an order purporting to be an amendment of its order of August 2, 1928, wherein and whereby it declared and decreed that its order of August 2, 1928, insofar as the same pertained to intrastate rates, was applicable "within and throughout the entire State of Florida without exception." a true copy of said amendatory order of February 7, 1929, is herewith tendered as Exhibit "D" and made a part hereof as if specifically set forth herein.

V

That the purpose, intent and effect of said order of the Interstate Commerce Commission of August 2, 1928, as amended by said order of February 7, 1929, is to refute and deny the construction and limitation placed upon the said order of August 2, 1928, by this Court prior to said amendment of February 7, 1929; and said order, as amended as aforesaid, constitutes an attempt on the part of said Interstate Commerce Commission to fix and establish intrastate rates from all points of origin on the lines of said Atlantic Coast Line Railroad Company in Florida to all destinations on the lines of said Railroad Company in Florida in all directions.

VI

That your Orator brings this supplemental bill to set forth the new facts, matters and things that have occurred and taken place since this Court's decision, opinion and decree of January 17, 1929, and to enjoin, set aside, annul and suspend report and "Said Order" of the Interstate Commerce Commission of August 2, 1928, as amended by the order of February 7, 1929, insofar as such report and order as amended required or attempts to require the Atlantic Coast Line Railroad Company to establish, put in force and maintain rates for the transportation of logs,

except walnut, cherry and cedar, in car loads, minimum weight, 40,000 in intrastate traffic "within and throughout the entire State of Florida, without exception", which shall be the same as those prescribed by said Interstate Commerce Commission as reasonable for transportation over said Atlantic Coast Line Railroad Company's lines, from points of origin in the State of Florida north of and in-
[fol. 1423] cluding Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on said Company's lines in the State of Georgia.

That report of said Interstate Commerce Commission and said Order of August 2, 1928, as amended as aforesaid with respect to the Florida Intrastate Rates on logs was and is arbitrary and unreasonable beyond the power of the Interstate Commerce Commission and wholly invalid and unlawful for the reasons following; among others, to-wit:

(a) That said report and said order as amended is null and void and of no effect, because the same is in excess of the powers conferred upon said Interstate Commerce Commission by law, and the same is not supported by substantial evidence.

(b) That in its report, heretofore referred to, said Interstate Commerce Commission made the following finding:

"While complainant assails the rates from all points on defendant's lines in Florida to all points on its lines in Georgia, the record shows that insofar as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry and cedar, from that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, hereinafter referred to as north Florida, to destinations in Georgia for distances not exceeding 170 miles."

Although said Commission confined its consideration and its findings to the above described restricted portion of Florida and its order as to interstate rates is confined to points in said restricted portion of Florida, yet the Commission by its order as amended required the Atlantic Coast Line Railroad Company to increase its rates on lots as between all points on its line within and thruout the entire state of Florida, without exception.

(c) Your Orator has a vital interest in the rates maintained by the Atlantic Coast Line Railroad Company, on logs from points in Florida to its mill at Perry, Florida, and all of said rates are required by said order as amended to be increased, altho many of said rates apply from points south of Perry, Florida, which are not within the territory considered by the Commission, and from which the interstate rates to Georgia were prescribed.

(d) That said Commission found that the intrastate rates between points in the portion of Northern Florida described by it, as above set forth, unduly discriminated against shippers in interstate commerce from such points to points in Georgia but by its order as amended required [fol. 1424] the Atlantic Coast Line Railroad Company to increase all of its rates in Florida, whether within or without the restricted territory referred to, and altho applying between points within the interior of Florida, none of which are near the border between Florida and Georgia, and that in so doing the Commission undertook to regulate purely intrastate commerce and exceeded the powers vested in it by law and its order is therefore null and void and of no effect.

(e) That said finding of the Commission that the rates applying intrastate within the northern portion of Florida, above referred to, unduly discriminate against shippers in interstate commerce, was made without any substantial evidence to support same in that all the evidence established that there was not and could not be any movement of logs from said northern portion of Florida to points in Georgia, nor was there any evidence to establish that if there should be any such movement it would be under substantially similar circumstances and conditions as the movement between points in Florida, and that said finding of the Commission is therefore arbitrary and is null and void.

(f) That said Commission, after finding that any intrastate rates in Florida lower than the rates prescribed by it for application between points in northern Florida and points in Georgia "result, and will result, in undue preference and advantage to shippers of intrastate traffic within the State of Florida and undue prejudice to shippers of interstate commerce from points in the State of Florida to

points in the State of Georgia," further found that such intrastate rates in Florida would result "in unjust discrimination against interstate commerce."

(g) That in finding that the rates on the lines of the Atlantic Coast Line Railroad Company in the State of Florida would result in unjust discrimination against interstate commerce, the Commission went beyond the issues presented to it by the parties, in that there was no contention on the part of the Georgia Public Service Commission or any intervener that the rates within Florida cast a burden on interstate commerce or discriminated against interstate commerce as a whole, because, on the contrary, the Georgia Public Commission contended that the rates applicable within the state of Florida were just and reasonable rates and should be applied to interstate transportation.

[fol. 1425] (h) That there was no substantial evidence to support the finding that the intrastate rates in Florida were such as to cast a burden upon or discriminate against interstate commerce, as a whole, and that such finding of the Commission was made without any substantial evidence to support same and the order of the Commission as amended based on such finding as arbitrarily made and is null and void and of no effect.

(i) Such report and said order as amended, as aforesaid, are unlawful because under the facts of record in such proceedings before the Interstate Commerce Commission there was no constitutional right or warrant for the exercise or attempt to exercise any federal power in derogation of or superior to the power and authority of the State of Florida in respect to the regulation of intrastate commerce sought to be affected by such order so amended.

(j) Such report and "Said Order" as amended, as aforesaid, are unlawful because the Interstate Commerce Commission has thereby sought to regulate internal concerns of the State of Florida as if unjust discrimination against interstate commerce in violation of Section 13 existed when there was not submitted to the Interstate Commerce Commission by any party to the proceedings before it any case or controversy of such character, and there was no other

pending proceeding or order of investigation of such Commission involving any such subject matter.

(k) Such report and "Said Order" as amended as aforesaid are unlawful because thereby the Interstate Commerce Commission has sought to embrace within the scope thereof all rates of the Atlantic Coast Line Railroad Company on logs between any stations on its line wholly within the State of Florida for any length of haul, and in any portions of such State, although there was no case or controversy submitted to that tribunal or pending before it involving in any way freight rates of the Atlantic Coast Line Railroad on logs within Florida except for hauls of 170 miles and less over such railroad and except for hauls of such length over such railroad wholly within a restricted and limited portion of the State. Furthermore, there was no substantial evidence in such proceedings before the Interstate Commerce Commission showing or tending to show that all freight rates of the Atlantic Coast Line Railroad Company on logs over any portion of its line, wholly within the State of Florida, violated or would violate either Section 3 or Section 13 or the Interstate Commerce Act. Therefore, such order unlawfully embraces within its territorial scope [fol. 1426] freight rates on logs between points within the State of Florida, as to which no case or controversy was submitted to the Interstate Commerce Commission and as to which no substantial evidence was directed.

(l) The said action of said Interstate Commerce Commission constitutes an unlawful invasion of the sovereign rights of the State of Florida reserved to it by the Constitution of the United States and of the citizens of said State of Florida, and is without any warrant or authority of or under the Constitution of the United States; and further, that the same Commission was and is without jurisdiction to enter its said order.

Forasmuch, therefore, as your Orator is without remedy save in the Court of Equity and to the end that the Defendants, the United States of America and the Interstate Commerce Commission, and the Intervenor, Georgia Pub-

lic Service Commission, and each of them, may, if they can show why your Orator should not have the relief herein prayed, and may full, true, direct and perfect answers make to this Supplemental Bill, to the best and utmost of their respective knowledge, remembrance, information and belief to each and every of the matters and things herein set forth, as if specifically interrogated, your orator would therefore pray:

First. That process may issue against the Defendants, United States of America and the Interstate Commerce Commission and the Intervenor, Georgia Public Service Commission with service thereof and of this Supplemental Bill in the manner prescribed by statute in such cases made and provided.

Second. That this Honorable Court will grant your Orator an interlocutory order enjoining, setting aside, annulling and suspending the enforcement of such part or parts of the order of the Interstate Commerce Commission of August 2, 1928, as amended February 7, 1929, that required or attempted to require the Atlantic Coast Line Railroad a common carrier, subject to the jurisdiction of the administrative regulatory commission of the State of Florida to establish, put in force and maintain rates for the transportation of logs, except walnut, cherry and cedar, in car loads, minimum weight, 40,000 in intrastate traffic within and throughout the entire State of Florida, without exception, which are the same as those prescribed by said Interstate Commerce Commission in said Order of August 2, 1928, as reasonable for transportation in Interstate Commerce, northbound from [fol. 1427] points of origin on the Atlantic Coast Line in Florida, north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, to destinations on said company's lines in the State of Georgia, without first having the authority of the State of Florida so to do; and that such interlocutory order continue in force and effect until further order of this Court.

Third. That upon final hearing there will be made and entered a decree and order of this Court enjoining, setting aside, annulling and suspending that portion of the order of the Interstate Commerce Commission entered by it on

August 2, 1928, in docket #18364, entitled Georgia Public Service Commission versus the Atlantic Coast Line Railroad (146 I. C. C. 717) as amended by said Interstate Commerce Commission, by its order of February 7, 1929, and by which said Interstate Commerce Commission required the Atlantic Coast Line Railroad Company to establish, put in force and maintain rates for the transportation of logs, except walnut, cherry and cedar, in car loads, minimum weight, 40,000 in intrastate traffic within and throughout the entire State of Florida, without exception, which shall be the same as those prescribed in said order of August 2, 1928, by said Interstate Commerce Commission in a preceding paragraph thereof, as reasonable for transportation in Interstate Commerce north bound from certain designated points in the State of Florida to destinations in the State of Georgia.

Fourth. That your Orator may have such, every and further relief in the premises as to this Honorable Court shall seem meet and proper, and as equity and good conscience may require.

And your Orator would therefore pray, etc.

Norman, Quirk & Graham, Solicitor- for Complainant.

[fol. 1428] *Duly sworn to by George L. Rutherford. Jurat omitted in printing.*

Tendered Feb. 21, 1929. Sam'l H. Sibley, U. S. Judge.

[fol. 1429] Exhibit D omitted; printed side page 1269 ante.

[fol. 1430] IN UNITED STATES DISTRICT COURT

NOTICE OF APPLICATION FOR TEMPORARY INJUNCTION—Filed March 1, 1929

To the Attorney General of the United States, the Interstate Commerce Commission, the Georgia Public Service Commission:

You will hereby take notice that the complainant herein will present to the Judge of the District Court of the United States for the Northern District of Georgia, Atlanta Division, at New Orleans, Louisiana, an application for a temporary or interlocutory injunction or a temporary stay or suspension, restraining the United States of America and the Interstate Commerce Commission from enforcing a part of that certain order entered by the Interstate Commerce Commission on the 2nd day of August, 1929, in Docket No. 18,364, and the amendment thereto of February 7, 1929, all of which is described in the original bill of complaint herein and in the supplementary bill of complaint in the nature of a Bill of Review and in the petition for Re-hearing, copies of which have been served upon you; and that said application will be heard at New Orleans, Louisiana, at 10 o'clock A. M., on the 7th day of March, 1929.

Dated this 23 day of February, 1929.

J. V. Norman, Solicitor for the Complainant.

Service, by copy, of the within application and notice is hereby acknowledged this 26th day of February, 1929.

Elmer B. Collins, Special Assistant to the Attorney General, for the Attorney General of the United States. J. Stanley Payne, for the Interstate Commerce Commission. Jas. A. Perry, Chairman, for the Georgia Public Service Commission.

This Mch. 1, 1929.

[fol. 1431] IN UNITED STATES DISTRICT COURT

ORDER ENTERTAINING PETITION FOR REHEARING AND TO SHOW CAUSE—Filed Feb. 21, 1929

This cause coming on to be heard upon petition for a rehearing herewith presented, and it appearing to the Court that new and additional facts and matters have developed since this Court's decision and final decree entered herein on January 17, A. D. 1929, and it further appearing that the term of this Court at which said opinion and decree was entered has not expired, upon consideration,

It is, therefore, ordered and decreed:

1. That this Court does hereby entertain said Petition for re-hearing;

2. That the defendants, the United States of America and Interstate Commerce Commission, and the intervenor, Georgia Public Service Commission, and each of them, be and they are each hereby ordered and required to show cause, if they can, on the 7 day of March, A. D. 1929, at New Orleans, La.

a. why the decree of this Court heretofore entered January 17, 1929 should not be opened, vacated and set aside.

b. why a re-hearing should not be granted herein;

c. why the complainant should not be permitted and allowed to file herein its supplemental bill in the nature of a bill of review tendered and presented with said Petition for re-hearing;

d. why the prays of said petition for re-hearing, each and every should not be granted.

[fol. 1432] 3. That a copy of this order and said Petition for re-hearing be served upon the defendants, the United States of America and Interstate Commerce Commission, and the intervenor, Georgia Public Service Commission.

Done and ordered this 21 day of February, A. D. 1929.

R. W. Walker, United States Circuit Judge. Ben C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

Received copy of the foregoing order and likewise copy of the petition for rehearing mentioned therein and accept service thereof this the 26 day of February, A. D. 1929.

Elmer B. Collins, Special Assistant to the Attorney General, for the United States of America. J. Stanley Payne, for the Interstate Commerce Commission. Georgia Public Service Commission, by Jas. A. Perry, Chairman.

[fol. 1433] IN UNITED STATES DISTRICT COURT

RETURN TO RULE TO SHOW CAUSE—Filed March 27, 1929

Now comes the United States of America, defendant in the above entitled proceeding, and for its Return to Rule to Show Cause issued against it herein, says:

United States assents to (a) opening of the decree of this Court entered herein on January 17, 1929; (b) granting of a re-hearing herein; (c) the filing by Petitioner of its supplemental bill in the nature of a bill to to review presented with its petition for rehearing.

United States further says, in response to the Rule to Show Cause, that in so far as the Court's said final decree herein dismissed Petitioner's Original Bill, said decree is just, proper and correct and, therefore, should be affirmed upon rehearing, notwithstanding the new matters and things alleged in the supplemental bill. But, inasmuch as this Court, in dismissing said original bill, so construed the order of the Interstate Commerce Commission issued August 2, 1928, as to restrict and limit the state-wide scope and effect of said order, as affecting intrastate rates on logs transported by the Atlantic Coast Line Railroad Company, and thus, in effect, annulled said order to the extent of such restriction and limitation, United States prays that the Court, in reconsidering this cause, give full effect to said order by holding that it validly and lawfully requires said intrastate rates to be increased from and to all points on the Atlantic Coast Line Railroad Company's lines within and throughout the State of Florida, and, thereupon, affirm its decree dismissing said original bill.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

[fol. 1434] IN UNITED STATES DISTRICT COURT

ANSWER OF THE UNITED STATES TO THE SUPPLEMENTAL BILL OF COMPLAINT—Filed Mar. 27, 1929

United States for answer to the supplemental bill filed herein against it says:

I

United States admits the allegations in paragraphs I, II, III and IV.

II

United States denies the allegations of paragraph V and specifically denies that the purpose, intent and effect of the order issued February 7, 1929, was or is "to refute and deny the construction and limitation placed upon the said order of August 2, 1928, by this Court." It alleges that the purpose and intent of the order issued February 7, 1929, was to reiterate and restate beyond possible misconception that by its order of August 2, 1928, the Interstate Commerce Commission intended to and did require the Atlantic Coast Line Railroad Company to establish, publish and maintain the intrastate rates in question throughout the State of Florida and not merely from and to intrastate points north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs.

III

United States denies generally the allegations and conclusions made and alleged in paragraph VI, with this exception: United States admits the allegations of sub-paragraph (f) of said paragraph VI.

Answering sub-paragraph (b) of paragraph VI United States denies that the findings of the Interstate Commerce Commission with respect to the intrastate rates were not confined or restricted to any particular portion of the State of Florida and that its finding in this respect is in the following words:

[fol. 1435] We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce.

IV

Except as herein expressly admitted, United States denies the truth of each and every allegation and conclusion contained in the supplemental bill in so far as they conflict either with the allegations herein, or with the statements or conclusions of fact included in said report and order of August 1, 1928.

Wherefore, having fully answered, defendant prays that the supplemental bill be dismissed at the cost of the plaintiffs and for such other and further order as may be appropriate.

Elmer B. Collins, Special Assistant to the Attorney General. William J. Donovan, the Assistant to the Attorney General. Clint W. Hager, United States Attorney.

Duly sworn to by Elmer B. Collins. Jurat omitted in printing.

[fol. 1436] In United States District Court

[Title omitted]

Order Granting Petition for Rehearing, etc.—Mar. 7, 1929

The above numbered and entitled causes came on this day to be heard upon the petition filed on behalf of the complainants for a rehearing herein and for leave to file a supplemental bill of complaint, and also, upon the motion of the Atlantic Coast Line Railroad Company for leave to intervene;

And, upon consideration thereof;

It is ordered that the petition of the complainants be granted, that the causes be re-opened and that complainants are permitted to file their supplemental bill of complaint herein;

It is further ordered that the motion of the Atlantic Coast Line Railroad Company be granted, and accordingly that the petition of intervention of said Atlantic Coast Line Railroad Company be filed of record.

[fol. 1437] In United States District Court

[Title omitted]

Order Referring Intervention to Trial on Merits—Mar. 7, 1929

Whereupon, after hearing argument of solicitors for the parties in interest, and on consideration thereof, it is ordered that the intervention herein, be referred to the trial of this case on the merits.

[fols. 1438 & 1439] Minute entries of argument and submission omitted in printing.

[fol. 1440] In United States District Court

Petition to Intervene of Atlantic Coast Line Railroad Company—Filed March 27, 1929

Now comes the Atlantic Coast Line Railroad Company, and respectfully represents unto this Honorable Court as follows:

(1) It is interested in the above entitled proceeding. It was the respondent in cause No. 18,364 before the Interstate Commerce Commission, in which the Georgia Public Service Commission was the complainant. It is affected by the order of the Interstate Commerce Commission made in said cause and will be affected by any order which this court may enter thereunder.

(2) Wherefore, petitioner prays that it be allowed to intervene in this cause.

Atlantic Coast Line Railroad Company, by F. B. Greer, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Its Attys.

The foregoing petition is granted and the Atlantic Coast Line Railroad Company is allowed to intervene in this cause.

This 7 day of March, 1929.

Sam'l H. Sibley, U. S. Judge.

[fol. 1441] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRELIMINARY MOTION OF ATLANTIC COAST LINE RAILROAD COMPANY, INTERVENER, RE PETITION FOR REHEARING

To the Honorable the Judges of the District Court for the Northern District of Georgia:

Now comes the Atlantic Coast Line Railroad Company, the Intervener in the above mentioned cause, and before pleading to the merits of this case respectfully represents unto this court as follows:

1

The supplemental pleadings in the cases filed as companion cases to this case show that on the 30th day of January, 1929, the Railroad Commissioners of Florida caused to be entered an order (No. 979) wherein and whereby they undertook to declare that all then existing Florida intrastate rates for the transportation of logs of the kind involved in this cause should continue in force and effect throughout the State, except to the very limited extent set out therein. The said order No. 979 purports to be effective over all the lines of the Atlantic Coast Line Railroad Company in the State of Florida for the transportation of logs, except cedar, moving northward in one direction from points of origin on the lines of the Atlantic Coast Line [fol. 1442] Railroad Company north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Florida for distances not exceeding 170 miles.

2

The said supplemental pleadings also show that the Railroad Commissioners of Florida filed suit in the Circuit Court of Duval County, Florida, in the name of the State of Florida, wherein the Atlantic Coast Line Railroad Company has been restrained from enforcing any rates on logs in Florida except those set out in the said order No. 979 of the said Florida Railroad Commission, and that inter-

locutory injunction was granted thereon against the Atlantic Coast Line Railroad Company.

3

The said supplemental pleadings further show that an ancillary bill was filed in connection with removal proceedings and the District Court of the United States for the Southern District of Florida denied to the Atlantic Coast Line Railroad Company an order restraining and enjoining the persons who are the Railroad Commission of Florida from enforcing the above mentioned injunction and dismissed this Intervener's said ancillary bill.

4

The said supplemental pleadings also show that this Intervener filed its bill in the United States District Court for the Northern District of Florida, seeking to restrain by injunction the enforcement of the said order No. 979 of the Florida Railroad Commission. The said bill was filed on the ground that said order was unconstitutional in that it conflicted with the commerce clause of the Constitution of [fol. 1443] the United States and the Acts of Congress made in pursuance thereof, especially the Act of Congress known as the Act to Regulate Commerce, approved February 4, 1887, and the amendments thereto, and particularly Section 13, sub-paragraph 4 thereof. The Judge of said United States District Court refused to call together three Judges for the trial of said cause, and dismissed Intervener's said bill.

5

Intervener alleges that the order of the United States District Court for the Southern District of Florida, above mentioned in the ancillary proceedings, has been appealed to the United States Circuit Court of Appeals for the Fifth Circuit, and a restraining order has been granted thereon until the further order of that Court, restraining the enforcement of the said order No. 979 and of the said order of the Circuit Court of Duval County, Florida, restraining the persons who are the Florida Railroad Commission from enforcing said order No. 979 and the said order of the Circuit Court of Duval County, Florida.

6

A motion to be allowed to file a petition for writ of mandamus has been filed by this Intervener in the Supreme Court of the United States, seeking a writ of mandamus to the Honorable, the Judge of the United States District Court for the Northern District of Florida, and to the State Court, requiring the Judge of said Court to call together two other Judges to his assistance to hear this Intervener's said bill.

7

Intervener alleges that the complainant in this case seeks [fol. 1444] to take advantage of this extraordinary and unusual condition while it seeks discretionary remedies from this Court, including the reopening of the final decree dismissing their bill, and also seeking discretionary relief by injunction.

8

Intervener alleges that said order of the Florida Railroad Commission was illegal; that the order of the Circuit Court of Duval County, Florida, was illegal; and the said order of the United States District Court for the Northern District of Florida was likewise illegal, for that the said Court, presided over by one Judge, had no jurisdiction to enter the order which was entered, and which is above referred to. Nevertheless, each of said order and judgments is being relied upon by complainants, and neither judgment has been reversed.

9

Intervener avers that it is impracticable for this Court to give full relief in this situation while the above mentioned proceedings remain in the condition above described, or while complainant is seeking to use any of said orders or proceedings. If the order of the Circuit Court of Duval County, Florida, remains in force, this intervener is enjoined, and will continue to be enjoined, from complying with any order which this Court may make in this cause, except in so far as it may happen to coincide with that order. If the Florida Commission's order is in force the Interstate Commerce Commission's order cannot go into

effect, except in the said limited territory. If the order of [fol. 1445] the District Court of the United States for the Northern District of Florida remains in effect this Intervener is further embarrassed thereby. The complainant is thus seeking to impede the exercise of the jurisdiction of this court in the premises, unless that jurisdiction be exercised according to its conception of its rights.

10

Intervener respectfully avers that the motion for rehearing and the supplemental pleadings of the complainant in this cause should not be considered by this court until those things which embarrass this court in the determination of the subject matter, and which are herein referred to, shall have been removed.

Wherefore this Intervener respectfully prays that this Honorable Court do not grant the petition to reopen this case or grant a rehearing, or otherwise proceed therein, until the complainant shall have removed or caused to be removed the orders, judgments and decrees above referred to, or until it shall have done those things which may be required by this court, necessary to remove the conflict of jurisdiction which has been caused by the said proceedings; and that none of the prayers of the complainant be considered unless and until the conditions referred to be relieved by it.

Respectfully submitted.

F. B. Grier, Carl H. Davis, W. E. Kay, Alston, Alston, Foster & Moise, Counsel for Atlantic Coast Line Railroad Company.

Received in Clerk's Office, March 27, 1929

[fol. 1446] In United States District Court

[Title omitted]

Answer of Atlantic Coast Line Railroad Company, Intervener

Now comes the Atlantic Coast Line Railroad Company, the intervener in the above mentioned cause and answers

the pleadings which are filed as a supplemental bill and for answer says:

I

(a) This intervener was the defendant in cause No. 18364 in the Interstate Commerce Commission in which the Georgia Public Service Commission was the petitioner.

(b) Intervener owns and operates about 2,200 miles of rail line in the State of Florida; that it does business as a common carrier by railroad over its own lines in the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama. It operates about 5,100 miles of its own line of rail, and that it is engaged in interstate and intrastate common carriage by railroad.

(c) Intervener admits the filing of the bill in the United States District Court for the Northern District of Georgia, as set out in paragraph 1 of the bill in this cause. The bill itself is referred to for its contents.

(d) It is admitted that answers were filed to said bill [fol. 1447] by the United States of America and the Interstate Commerce Commission, and that the Georgia Public Service Commission intervened and filed its answer.

(e) It is admitted that two other bills were filed at the same time and in the same court. It is admitted that there was a hearing in said cause as is set out in paragraph 1 of the bill in this case and that an opinion was handed down and that a decree was rendered dismissing each of the original bills. The decree and the opinion are referred to.

II

Intervener denies the allegations of paragraph 2 of the bill in this case and more fully answers the same hereinafter.

III

Allegations of paragraph 3 of the bill require no answer.

IV

Allegations of paragraph 4 of supplemental bill are admitted.

V

Answering paragraph 5 of the supplemental bill, intervener says that the Interstate Commerce Commission did enter its order of February 7, 1929, above referred to. That the said order was made for the purpose of making it clear that its order of August 2, 1928 applied throughout the entire State of Florida over the lines of the Atlantic Coast Line Railroad Company without exception, and intervener says that this was necessary in order to remove the unjust discrimination against interstate commerce which was being worked by the Florida intrastate rates on logs, commonly known as the Cummer scale of rates.

[fol. 1448]

VI

This intervener denies that the order of the Commission of August 2, 1928, as amended, is arbitrary and unreasonable or beyond the power of the Interstate Commerce Commission, or that it is invalid or unlawful for any of the reasons mentioned in paragraph 6 of the supplemental bill in this cause.

Further answering said paragraph, intervener denies that said order of the Interstate Commerce Commission is void because of any matter or thing set out in sub-paragraphs A, B, C, D, E, F, G, H, I, J, K, L.

Further answering the supplemental bill, this intervener says:

VII

The order of the Interstate Commerce Commission was issued after an investigation and the taking of a great deal of evidence orally and by way of statistical data. Petition was filed by the Georgia Public Service Commission with the Interstate Commerce Commission in May, 1926, and an order was rendered on August 2, 1928. In the meantime evidence was taken before an examiner of the Commission on October 20th, 21st and 22nd, 1926, at Valdosta, Georgia.

Further evidence was taken in Jacksonville, Florida, before an examiner of the Commission on January 18th, 19th, 20th and 21st, 1927. There were 53 exhibits offered and received in evidence. There were about 30 witnesses examined. The subject was investigated with great detail. Many shippers and carriers intervened in said cause and the Florida Railroad Commissioners appeared in defense of the then Florida rates which were in question.

VIII

Ample evidence was offered and received not only to justify, but to require, the order of the Interstate Com-[fol. 1449] merce—which order notified and required this intervener to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain in intrastate commerce within the State of Florida those rates which this intervener has put into effect and is maintaining on logs, except walnut, cherry and cedar, and which rates are otherwise described in the pleadings in this cause.

IX

The evidence before the Interstate Commerce Commission showed:

(a) That the Florida Commissioners had in writing stated that the rates in Florida which were complained of were too low and were such as might be deemed confiscatory;

(b) That the rates which the Interstate Commerce Commission has ordered into effect in its order of August 2, 1928, are on substantially the same basis as the present rates under the scale prescribed by the Interstate Commerce Commission from points in South Carolina south of Columbia to Savannah, Georgia, and from South Carolina to destinations in North Carolina, and on logs from points on intervener's line south of Charleston to Savannah;

(c) That the charges per car of 50,000 pounds on logs from Live Oak, Florida, to Jacksonville, Florida, 128 miles,

were $16.00, while from the same point of origin to Waycross, Georgia, 83 miles, the charges on the same logs are $35.00. This illustration is only one of many illustrations covered by the evidence as to the disparity of rates interstate and intrastate;

[fol. 1450] (d) That the rate intrastate in Florida on logs under the Florida scale known as the Cummer Scale, which was the scale under attack in this case, was not so much as one-half of the rate on the same logs moving over intervener's line from points in Florida to points in Georgia. To illustrate: The rate on a car of 50,000 pounds from Jasper, Florida, to Lake City, Florida, a distance of 69 miles, is $11.50 under the Cummer Scale, and from Jasper, Florida, to Valdosta, Georgia, a distance of 59 miles, the rate is $27.50.

(e) That the rates on logs in cars of 50,000 pounds covering interstate movements from points of origin in Florida to Georgia destinations were higher than the rates then applicable to the same transportation of the same commodity moving in the same circumstances intrastate in Florida over the lines of this intervener by from 46% to 233%;

(f) That a manufacturer of lumber in Georgia who would draw his logs from Florida points would be at a disadvantage in the eastern markets of about $60.00 per car of lumber as compared with the Florida producer who got his logs in Florida and moved them the same distances under the same circumstances of transportation. The said eastern markets were desirable markets to the Florida and Georgia manufacturers;

(g) That a difference of $10.00 to $12.00 per car was a sufficient difference to keep a manufacturer of lumber thus discriminated against out of competition with the favored manufacturer;

(h) That the rates under said Cummer Scale were the lowest rates known to expert rate men for the transportation of logs anywhere in the United States;

(i) That the rates under the said Cummer Scale, that is the Florida intrastate scale complained of in said cause, are

[fol. 1451] only from ⅓ to ½ of the rates on other commodities having like transportation characteristics, moving in similar circumstances, such as sand, gravel, lime, cement and brick;

(j) That the rate complained of was very much less than the rate for the same class of transportation on any other line of railroad doing business in Florida;

(k) That there are 64 saw mills along this intervener's line in Georgia within 170 miles of Florida, and that these mills cannot compete with the Florida producer of lumber in the eastern markets because of the difference in the rates on the inbound logs, which rates were the subject of investigation in said cause.

(l) That the amount of the burden on interstate commerce made by the unduly low rates on said intrastate shipments of logs in Florida under the said Cummer Scale of rates, which were under attack in said cause, would amount to several millions of dollars;

(m) That the volume of the traffic covered by the said logs was such that the discrimination against interstate commerce would continue for many years;

(n) That the difference in the rates under the Cummer Scale and in those under the properly established interstate scales applicable to logs moving over the lines of this intervener was so great that the necessary commercial effect was to require the movement of logs in Florida to Florida manufacturing points, and to prevent the movement of said logs to Georgia manufacturing points, although the circumstances of transportation were equally as advantageous to the Georgia manufacturing points;

(o) That the effect of the rates under the Cummer Scale was to undertake to preserve this advantage to intrastate [fol. 1452] commerce at the expense of interstate commerce;

(p) The evidence showed many other kinds of discriminations which were unjust and unduly prejudicial to interstate commerce; and also showed that the discriminations above pointed out were unjust, unduly prejudicial and unlawful.

X

Intervener alleges that under date of January 30, 1929, the Florida Railroad Commissioners, to-wit, A. S. Wells, E. S. Matthews and Mamie G. Eaton, adopted a writing which they called their order No. 979, which is set out in the exhibits filed in this cause, which order undertook to prevent the Atlantic Coast Line Railroad Company, this intervenor from applying the rates prescribed by the order of the Interstate Commerce Commission of August 2, 1928 except in a very limited way, and over a small mileage of this intervenor, and to so limit the said order of the Interstate Commerce Commission that it would have no practical effect whatever. The said writing of the Florida Commission was unlawful because it dealt with a subject matter over which the said Commissioners have no jurisdiction, to-wit, an order of the Interstate Commerce Commission, and it undertook to amend or annul said order in whole or in part; also because it undertook to make an order in conflict with the said order of the Interstate Commerce Commission; also because it undertook to apply its own construction of the said order of the Interstate Commerce Commission, which construction was in conflict with the opinion rendered by this Court in the same matter on the 17th of January, 1929. In all events, the said order of the Florida Railroad Commissioners was unnecessary and unlawful. Thereafter, the Florida Commissioners caused a proceeding to be instituted to the Circuit Court of Duval County, Florida [fol. 1453] for the purpose of restraining and enjoining this intervenor from complying with the order of the Interstate Commerce Commission except as limited as aforesaid by the aforesaid order No. 979; and in said cause the said Circuit Court entered its order restraining and enjoining the Atlantic Coast Line Railroad Company as prayed. The proceedings in said Circuit Court of Duval County are unlawful and are null and void for the reason that said Court undertook to deal with a matter beyond its jurisdiction, that subject matter being the amending or annulling in whole or in part of the said order of the Interstate Commerce Commission. It was further null and void because the said cause had been removed to the proper United States District Court prior to the entry thereof.

XI

The said order of the Florida Commissioners, No. 979, and the said proceedings by the Florida Commissioners in the Circuit Court of Duval County, Florida, make a direct conflict between the authority of the Federal Government and the acts of those who are undertaking to enforce the powers of the State of Florida.

XII

The Wilson Lumber Company, complainant in this case, is seeking to avail itself of the aforementioned order of the Florida Railroad Commissioners, No. 979, and of the said order of injunction issued by the Circuit Court of Duval County, Florida.

[fol. 1454] XXIII

The rates for the intrastate transportation of logs in Florida prescribed as aforesaid by the Interstate Commerce Commission pursuant to lawful authority are the only lawful rates for such intrastate transportation of logs. Intervenor affirms that the said order #979 of the Florida Commission is unlawful and void and that the aforementioned order of the Circuit Court of Duval County, Florida is also unlawful and void. Any order which this Court may make in this cause sustaining the order of the Interstate Commerce Commission should in order to afford completely effective relief to intervenor, enjoin the said Florida Commissioners and their counsel and employees from enforcing either the said order of the Florida Commissioners or the said order of the Circuit Court of Duval County, Florida.

XIV

Wherefore intervenor prays:

(1) That the prayers of the complainants be denied;

(2) That the Interstate Commerce Commission's order dated August 2, 1928, effective over all of the lines of this intervenor in the State of Florida, without exception, be held to be valid;

(3) That this court do those things and enter such orders and decrees as may be necessary or proper to make effective the said order of the Interstate Commerce Commission;

(4) That all such orders, interlocutory and/or final, as may be necessary or appropriate to full relief in the premises be entered;

(5) Intervenor prays such other and further relief as may be meet and proper in the premises.

F. B. Grier, Carl H. Davis, A. E. Kay, Alston, Alston, Foster & Moise, Attys. for A. C. L. R. R. Co.

[fol. 1455] *Duly sworn to by Frank L. Glover. Jurat omitted in printing.*

Received in Clerk's office March 27, 1929.

[fols. 1456 & 1457] Orders of I. C. C. omitted; printed side page 112 ante.

[fols. 1458-1461] Opinion on rehearing omitted; printed side page 217 ante.

[fol. 1462] IN UNITED STATES DISTRICT COURT

In Equity. No. 512

THE WILSON LUMBER COMPANY OF FLORIDA, Complainant,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

FINAL DECREE ON REHEARING—Filed April 22, 1929

In the above stated case, on petition of complainants to open our former decree entered on January 17th, 1929, denying relief and dismissing the original bill, a rehearing was granted and said decree reopened, and thereupon the

Atlantic Coast Line Railroad Company, on its petition, was allowed to intervene in support of the order of the Interstate Commerce Commission of August 2nd, 1929.

The case was submitted for final decree on the reargument and rehearing, to a court of three judges, to-wit: Hon. Richard W. Walker, United States Circuit Judge, Hon. Samuel H. Sibley, United States District Judge, and Hon. Benjamin C. Dawkins, United States District Judge.

After hearing argument on the same evidence as at the first hearing, and the Court being fully advised:

It is, for the reasons stated in our opinion of March 22nd, 1929 (which opinion is duly filed as a part of the record), ordered, adjudged and decreed that the original and supplemental bill be and the same hereby is now dismissed and [fol. 1463] the relief prayed denied.

This April 17th, 1929.

R. W. Walker, United States Circuit Judge. Ben. C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

[File endorsement omitted.]

[fol. 1464] In United States District Court

[Title omitted]

Petition for Appeal

The Wilson Lumber Company of Florida, complainant, feeling itself aggrieved by the final order or decree of the United States District Court for the Northern District of Georgia, dated April 17, 1929 and entered April 22, 1929, which denied the relief sought and dismissed the bill and supplemental bill, prays an appeal therefrom to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith. It prays that its appeal be allowed and that citation be issued as provided by law, and that the transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States.

J. V. Norman, Norman, Quirk & Graham, Solicitors for Wilson Lumber Company of Florida.

June 6th, 1929.

[fol. 1465] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 6, 1929

The Wilson Lumber Company of Florida, by its counsel, now comes and in connection with its petition for appeal files the following Assignment of Errors upon which it will rely on its appeal to the Supreme Court of the United States from the final order or decree of the District Court, entered April 17, 1929.

The District Court erred:

I

In denying the relief prayed and dismissing the bill and the supplemental bill.

II

In holding that the order of the Interstate Commerce Commission, of August 2, 1928, as amended on February 7, 1929, was within the lawful powers of the Commission.

III

In holding that said order of the Interstate Commerce Commission was within the issues sought to be investigated.

IV

In holding that said report and order of the Interstate Commerce Commission was made after a full hearing of the questions determined in the report and upon which the order was predicated.

[fol. 1466]

V

In holding that said order of the Commission was supported by sufficient evidence and was not arbitrary.

VI

In holding that the said order of the Interstate Commerce Commission did not constitute an unlawful invasion

of the rights and powers of the State of Florida reserved to it by the Constitution of the United States.

VII

In holding that the Interstate Commerce Commission "was at liberty to supplement" the facts shown.

VIII

In holding that the Commission was justified "in rejecting the inclusion of slight net income" asserted by the witnesses and predicating said holding upon the right of the Commission to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions, and the Railroads must have in such matters."

IX

In holding that the Interstate Commerce Commission is vested with authority to condemn an intrastate rate charged by a single railroad on a single commodity on the ground that such rate discriminates against general interstate commerce which it is held that there is no discrimination against particular interstate commerce or against shippers and localities in interstate commerce.

X

In failing and refusing to find that the issue as to whether the lower level of the Florida intrastate log rates of the Atlantic Coast Line Railroad cause or would cause unjust discrimination against interstate commerce in violation of Section 13 when construed with Section 15a of the Interstate Commerce Act, was eliminated from the proceeding before the Commission by the parties thereto.

[fol. 1467]

XI

In failing and refusing to find that there was no substantial evidence before the Interstate Commerce Commission supporting or tending to support the finding by the Commission that the continued maintenance by the Atlantic

Coast Line Railroad of the Florida intrastate log rates would subject interstate commerce to unjust discrimination in violation of Sections 13 and 15a of the Interstate Commerce Act.

XII

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because there was no substantial evidence to support the finding that the Florida intrastate log rates of the Atlantic Coast Line Railroad were less than reasonably compensatory.

XIII

In failing and refusing to find that there was no substantial evidence of record before the Interstate Commerce Commission showing or tending to show that substantially similar circumstances and conditions surrounded the transportation of logs by railroad on the one hand over the Atlantic Coast Line Railroad Company between points in Florida and on the other hand from origins on its line in Florida to destinations in Georgia.

XIV

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because they seek to interfere with the voluntary continuance of the Florida intrastate rates on logs over its line by the Atlantic Coast Line Railroad Company without any substantial evidence showing or tending to show that the continuance of such Florida intrastate log rates in any way violates the provisions of the Interstate Commerce Act, and without any request or petition by said Atlantic Coast Line Railroad Company to either the Interstate Commerce [fol. 1468] Commission or to the Florida Railroad Commission to increase such Florida intrastate log rates, and without any other effort whatsoever by said Atlantic Coast Line Railroad Company to increase said rates.

XV

In failing and refusing to find that the intrastate rates, investigated by the Interstate Commerce Commission, were

not those contemplated by Section 13 (4) of the Interstate Commerce Act, as amended, because same were voluntarily initiated and maintained by the carrier, and therefore not "made or imposed by authority of any State", within the description of Section 13 (3) of said Act.

XVI

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because the facts of record before the Commission do not show that there is or would be any real or substantial injury to or restriction upon interstate commerce as a consequence of the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company.

XVII

In failing and refusing to hold that Section 13 of the Interstate Commerce Act is in violation of the Constitution of the United States, and especially the Tenth Amendment thereto, if same be construed to vest in the Interstate Commerce Commission the powers here asserted.

XVIII

In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are unlawful because there were no facts of record in such proceeding before the Interstate Commerce Commission showing, or tending to show, nor did the Interstate Commerce Commission find any facts sufficient to constitute, unjust discrimination against interstate commerce in violation of the provisions of Section 13 of the Interstate Commerce Act.

[fol. 1469]

XIX

In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are unlawful because said Commission has thereby sought to embrace within the scope thereof all rates of the Atlantic Coast Line Railroad Company on logs between any stations on its line wholly within the State of Florida for any length of haul not exceeding 170 miles and in any portion of such State, although there was no case or controversy

submitted to that tribunal or pending before it involving in any way freight rates of the Atlantic Coast Line Railroad Company on logs within Florida, except for hauls of 170 miles and less over such railroad wholly within the so-called Northern portion of the State of Florida.

XX

In failing and refusing to hold that the proceeding before the Commission was essentially a proceeding instituted in behalf of Georgia shippers to properly relate the rates on logs from a restricted territory in Northern Florida to points in the state of Georgia with the rates on logs in the said restricted territory in Northern Florida and did not present nor could not present the question that the rates on logs throughout Florida constituted an undue discrimination against general interstate commerce or put an undue burden on the revenues arising from interstate commerce and accruing to the carriers subject to the Interstate Commerce Act and that, therefore, the Commission was without power to make the order complained of.

Wherefore petitioner prays that the final order or decree of the District Court, entered April 17, 1929, be reversed and that the matter be remanded to said Court with instructions to suspend, annul and permanently enjoin said order of the Commission entered on August 2nd, 1928 (and changed in language for the purpose of clarification on February 7, 1929) in the proceeding before the Commission cited Georgia Public Service Commission v. A. C. L. [fol. 1470] R. R. Co., 146 I. C. C. 717, in so far as said order prescribes for future effectiveness the rates to be applied to the transportation of logs intrastate within the State of Florida over the lines of the Atlantic Coast Line Railroad Company.

Wilson Lumber Company of Florida, by J. V. Norman; Norman, Quirk & Graham, Counsel.

Louisville, Ky., June 6th, 1929.

[fol. 1471] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING APPEAL—Filed June 19, 1929

The complainant having filed its petition for appeal herein the same is hereby granted and the complainant is hereby allowed to appeal said cause, and

It is ordered that said appeal be and the same is hereby entered in the Supreme Court of the United States upon the filing of a bond by said complainant in the sum of Five Hundred Dollars ($500.00) with good and sufficient surety to be approved by this Court conditioned upon the said complainant prosecuting its appeal to effect, and answering all costs if it fails to make its plea good.

This 6th day of June, A. D. 1929.

R. W. Walker, United States Circuit Judge. Ben C. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

[fol. 1472] Bond on appeal for $500.00, approved and filed June 13, 1929, omitted in printing.

[fol. 1473] IN UNITED STATES DISTRICT COURT

ACKNOWLEDGMENT OF SERVICE OF GEORGIA PUBLIC SERVICE COMMISSION, ATLANTIC COAST LINE RAILROAD CO., INTERVENER—Filed June 20, 1929

Service is hereby acknowledged by each, the Georgia Public Service Commission, and the Atlantic Coast Line Railroad Company, defendants, of copies of the following described appeal papers in the above entitled cause:

1. Complainant's petition for appeal.
2. Complainant's assignment of errors.
3. Order of the District Court granting appeal.
4. Præcipe for transcript of record.

Jas. A. Perry, Att'y for Georgia Public Service Commission. Alston, Alston, Foster & Moise, for Atlantic Coast Line Railroad Company.

Dated this 20th day of June A. D., 1929.

[fols. 1474-1483] Præcipe for transcript of record omitted; printed side page 235 ante.

[fols. 1484-1487] Citation, in usual form, showing service on Elmer B. Collins et al., omitted in printing.

[fol. 1488] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 1489] IN UNITED STATES DISTRICT COURT

In Equity. No. 514. In Equity. No. 511. In Equity. No. 512

[Titles omitted]

ORDER FURTHER ENLARGING TIME WITHIN WHICH TO DOCKET THE CASES AND FILE THE RECORD THEREOF—Filed in U. S. Supreme Court Nov. 5, 1929.

It appearing that the parties and their respective counsel [fol. 1490] are distant; and that further enlargement of time is required to reduce to narrative statement the testimony and exhibits contained in the voluminous transcript of the record of the evidence and proceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare and certify the transcript of the record of this Court on the Appeals, and for other good cause shown,

It is ordered that the time in which the State of Florida, et al., Brooks-Scanlon Corporation, et al., and the Wilson Lumber Company of Florida, complainants, shall furnish, serve and file in the office of the Clerk of the District Court their narrative statement of the evidence offered before the District Court and their designation for the record of additional appeal papers which have been filed, and in which to cause the transcript of the record to be completed, and in which to docket the case and file the record thereof with the Clerk of the Supreme Court of the United States, be, and it

is hereby further enlarged to and including Monday, December 2, 1929. No further time will be granted. Oct. 28, 1929.

R. W. Walker, United States Circuit Judge. Ben L. Dawkins, United States District Judge. Sam'l H. Sibley, United States District Judge.

Dated this — day of ——, 1929.

The entry of the foregoing order enlarging the time within which to docket the cases and file the record thereof is hereby consented to.

Fred H. Davis, as Attorney General; T. T. Turnbull, [fol. 1491] Solicitors for Complainants in No. 514. Geo. L. Rutherford, H. P. Adair, C. W. Mitchell, August Gutheim, Chas. E. Cotterill, Solictors for Complainants in No. 511. J. V. Norman, Solicitor for Complainant in No. 512. Elmer B. Collins, Solicitor for United States of America. J. Stanley Payne, Solicitor for Interstate Commerce Commission. Jas. A. Perry, Solicitor for Georgia Public Service Commission. Robt. C. Alston, Alston, Alston, Foster & Moise, Solicitors for Atlantic Coast Line Railroad Company, Defendants and Intervening Defendants in Nos. 514, 511, and 512.

[fol. 1492] [File endorsement omitted.]

[fol. 1493] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1929

No. 493

STATEMENT OF POINTS ON WHICH STATE OF FLORIDA and A. S. WELLS, E. S. MATHEWS, ET AL. INTEND TO RELY AND OF THE PARTS OF THE RECORD WHICH ARE NECESSARY FOR THE CONSIDERATION THEREOF—Filed Dec. 10, 1929

State of Florida and A. S. Wells, E. S. Mathews, et al., Appellants in this appeal for the reversal of the decree of the District Court for the Northern District of Georgia, will rely upon all the points raised by their Assignments of Error herein, including among others the following points:

I. The order of the Interstate Commerce Commission constitutes an invasion, in contravention of the Constitution of the United States, of the sovereign rights of the State of Florida reserved to it under said Constitution.

NOTE.—This point is applicable to Assignments of Error I, II, XIII, XIX, and XXVII.

[fol. 1494] II. The construction placed by the Interstate Commerce Commission and by the trial court in their respective orders, opinions and decrees below render Section 13 of the Interstate Commerce Act as amended unconstitutional and void insofar as it is applicable to the controversy at bar.

NOTE.—This point is applicable to Assignments of Error I, II, XIII, XIX, and XXVII.

III. The order of the Interstate Commerce Commission constitutes an act in contravention of the Constitution of the United States.

NOTE.—This point is applicable to Assignments of Error I, II, XIII, XIX, and XXVII.

IV. The order of the Interstate Commerce Commission was beyond the scope of the power conferred upon it by Acts of Congress or any of them.

NOTE.—This point is applicable to Assignments of Error I, II, XIX, and XXVII.

V. The order of the Interstate Commerce Commission was made without any substantial evidence to support it.

NOTE.—This point is applicable to Assignments of Error I, III, IV, V, IX, XI, XII, XVI, XXI, XXII, XXIV, and XXVII.

VI. The order of the Interstate Commerce Commission at bar, being state wide, was beyond the scope of the issues upon which the controversy was actually tried before the Interstate Commerce Commission.

NOTE.—This point is applicable to Assignments of Error I, VI, VII, VIII, X, XIV, XVII, XX, and XXVII.

VII. The order of the Interstate Commerce Commission was made without the full hearing required by Section 13

of the Interstate Commerce Act as amended as a condition precedent to the entry of said order.

NOTE.—This point is applicable to assignments of Error [fol. 1495] I, XIII, XVIII, XXV, XXVI, and XXVII.

VIII. The order of the Interstate Commerce Commission, state wide in its scope, was made without the investigation and hearing required by Section 13 of the Interstate Commerce Act as amended, as a condition precedent to the entry of such order fixing intrastate rates for the transportation of logs wholly within a State.

NOTE.—This point is applicable to Assignments of Error I, XVIII, XXV, XXVI, and XXVII.

IX. The Interstate Commerce Commission was without power to regulate or fix intrastate rates for the transportation of logs wholly within the State of Florida because such rates were voluntarily initiated and maintained by the carrier and were not rates "made or imposed under the authority of any State" within the meaning of Section 13 of the Interstate Commerce Act as amended.

NOTE.—This point is applicable to Assignments of Error I, X, XV, and XXVII.

X. The District Court, in order to uphold the power of the Interstate Commerce Commission to fix a statewide intrastate rate, found (and that without substantial evidence) that "on the face of things the log rate is too low and likely to burden the carrier", and in so doing exercised an administrative power not possessed by the Court.

NOTE.—This point is applicable to Assignments of Error I, XXIII, and XXVII.

XI. The District Court erred in holding that the Interstate Commerce Comimssion "was at liberty to supplement" the facts shown and to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida Railroad Commissions and the Railroads must have in such matters."

NOTE.—This point is applicable to Assignments of Error I, VI, VII, VIII, and XXVII.

[fol. 1496] XII. The District Court should have granted the relief prayed in the bill and the supplemental bill and should have permanently enjoined the order of the Interstate Commerce Commission.

NOTE.—This point is applicable to Assignments of Error I and XXVII.

Parts of the Record Necessary for the Consideration of the Points Above Mentioned

And the said Appellants respectfully represent that the whole of the record is necessary for the consideration of the points above specified.

Respectfully submitted.

Fred H. Davis, as Attorney General of the State of Florida, Appellant. T. T. Turnbull, of Counsel.

December 9, 1929.

Service of copy of foregoing statement of points to be relied upon is hereby asknowledged this — day of December, 1929.

August S. Gutheim, Solicitor for Brooks-Scanlon Corporation et al., Appellant-, No. 494. J. V. Norman, Solicitor Wilson Lumber Company of Florida, Appellant, No. 495. Elmer B. Collins, for United States of America, Appellee. Daniel W. Knowlton, Solicitor for Interstate Commerce Commission.

[fol. 1497] Service of copy of foregoing statement of points to be relied upon is hereby acknowledged this 6th day of December, 1929.

Jas. A. Perry, Solicitor for Georgia Public Service Commission, Appellee. Robert C. Alston, Solicitor for Atlantic Coast Line Railroad Company, Appellee. T. R. Gress, Assistant Attorney General, State of Georgia, for the Attorney General.

[fol. 1498] [File endorsement omitted.]

[fol. 1499] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1929

No. 494

STATEMENT OF POINTS ON WHICH BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, AND CUMMER CYPRESS COMPANY INTEND TO RELY AND OF THE PARTS OF THE RECORD WHICH ARE NECESSARY FOR THE CONSIDERATION THEREOF—Filed Dec. 10, 1929.

Brooks-Scanlon Corporation, Wilson Cypress Company and Cummer Cypress Company will rely on the following points in brief and upon oral argument on the hearing of this appeal for the reversal of the decree of the District Court for the Northern District of Georgia.

I. The order of the Interstate Commerce Commission was beyond the scope of the issues raised in the proceeding before it wherein said order was entered.

NOTE.—This is applicable to our Assignments of Error VI, VII, VIII, X, XIV, XVII, and XX.

II. The order of the Interstate Commerce Commission was made without any substantial evidence to support it.

NOTE.—This is applicable to our Assignments of Error III, IV, V, IX, XI, XII, XVI, XXI, XXII, and XXIV.

[fol. 1500] III. The order of the Interstate Commerce Commission was made without the full hearing required as precedent thereto by the Interstate Commerce Act.

NOTE.—This is applicable to our Assignments of Error XVIII, XXV, and XXVI.

IV. The order of the Interstate Commerce Commission was beyond the scope of its statutory power.

NOTE.—This is applicable to our Assignments of Error II, and XIX.

V. The Interstate Commerce Commission, in condemning existing rates and in fixing rates for the future, is not authorized or empowered to "supplement" the facts shown

of record before it, or to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions, and the railroads must have in such matters."

NOTE.—This is applicable to our Assignments of Error XXI and XXII.

VI. The Interstate Commerce Commission was without power to regulate and fix the intrastate rates for transportation of logs wholly within the State of Florida because said rates were voluntarily initiated and maintained in effect by the carrier and were not rates "made or imposed by authority of any State" within the description of Section 13 (3) of the Interstate Commerce Act.

NOTE.—This is applicable to our Assignments of Error X and XV.

VII. The order of the Interstate Commerce Commission constituted an act in contravention of the Constitution of the United States.

NOTE.—This is applicable to our Assignments of Error II, XIII, and XIX.

VIII. The District Court, in order to uphold the jurisdiction and order of the Interstate Commerce Commission, relied upon the Court's own conclusion with respect to the propriety of the rates in controversy, and in so doing exercised administrative power not possessed by said Court.

NOTE.—This is applicable to our Assignments of Error XXIII.

[fol. 1501] IX. The District Court should have granted the relief prayed for in the bill and in the supplemental bill and should have permanently enjoined the order of the Interstate Commerce Commission.

NOTE.—This is applicable to our Assignments of Error I, and XXVII.

Parts of the Record Necessary for the Consideration of the Points Above Mentioned

And the said Appellants respectfully represent that the whole of the record is necessary for the consideration of the points above specified.

Respectfully submitted.

Geo. L. Rutherford, H. P. Adair, E. W. Mitchell, August G. Gutheim, Chas. E. Cotterill, Solicitors for Appellants.

December 9, 1929.

Service of copy of foregoing statement of points to be relied upon is hereby acknowledged this — day of December, A. D., 1929.

Fred H. Davis, as Atty. Genl., Solicitor for State of Florida and A. S. Wells, E. S. Mathews, et al., etc., Appellant-, No. 493. J. F. Norman, Solicitor Wilson Lumber Company of Florida, Appellant, No. 495. Elmer B. Collins, for United States of America, Appellee. Daniel W. Knowlton, Solicitor for Interstate Commerce Commission.

[fol. 1502] Service of copy of foregoing statement of points to be relied upon is hereby acknowledged this 6th day of December, A. D. 1929.

Jas. A. Perry, Solicitor for Georgia Public Service Commission, Appellee. Robert C. Alston, Solicitor for Atlantic Coast Line Railroad Company, Appellee. T. R. Gress, Assistant Attorney General, State of Georgia, for the Attorney General.

[fol. 1503] [File endorsement omitted.]

[fol. 1504] In Supreme Court of the United States, October Term, 1929

No. 495

Statement of Points on Which Wilson Lumber Company of Florida Intends to Rely and of Parts of the Record Which are Necessary for the Consideration Thereof—Filed Dec. 10, 1929

Wilson Lumber Company of Florida will rely on the following points in brief and in oral argument on the hearing

of this appeal for the reversal of the decree of the District Court for the Northern District of Georgia.

I. The order of the Interstate Commerce Commission was beyond the scope of the issues tried in the proceeding before it wherein said order was entered.

NOTE.—This is applicable to our Assignments of Error III, X, XIX, and XX.

II. The order of the Interstate Commerce Commission was made without any substantial evidence to support it.

NOTE.—This is applicable to our Assignments of Error V, XI, XII, XIII, XVI, and XVIII.

[fol. 1505] III. The order of the Interstate Commerce Commission was made without the full hearing required as precedent thereto by the Interstate Commerce Act.

NOTE.—This is applicable to our Assignments of Error IV, XIX, and XX.

IV. The order of the Interstate Commerce Commission was beyond the scope of its statutory power.

NOTE.—This is applicable to our Assignments of Error II, IX, XIV, and XV.

V. The Interstate Commerce Commission was without power to regulate and fix the intrastate rates for transportation of logs wholly within the State of Florida because said rates were voluntarily initiated and maintained in effect by the carrier and were not rates "made or imposed by authority of any state" within the description of Section 13 (3) of the Interstate Commerce Act.

NOTE.—This is applicable to our Assignments of Error XIV and XV.

VI. The order of the Interstate Commerce Commission constituted an act in contravention of the Constitution of the United States.

NOTE.—This is applicable to our Assignments of Error II, VI, and XVII.

VII. The District Court erred in holding that the Interstate Commerce Commission "was at liberty to supple-

ment" the facts shown and to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions, and the railroads must have in such matters."

NOTE.—This is applicable to our Assignments of Error VII and VIII.

[fol. 1506] VIII. The District Court should have granted the relief prayed for in the bill and in the supplemental bill and should have permanently enjoined the order of the Interstate Commerce Commission.

NOTE.—This is applicable to our Assignments of Error I.

Parts of the Record Necessary for Consideration of the Points Above Mentioned

And the said Appellant respectfully represents that the whole of the record is necessary for the consideration of the points above specified.

Respectfully submitted.

J. V. Norman, Solicitor for Appellant.

Services of copy of foregoing statement of points to be relied upon is hereby acknowledged this 6th day of December, 1929.

Elmer B. Collins, Solicitor for United States of America, Appellee. Daniel W. Knowlton, Solicitor for Interstate Commerce Commission. Jas. A. Perry, Solicitor for Georgia Public Service Commission, Appellee. Robert C. Alston, Solicitor for Atlantic Coast Line Railroad Company, Appellee. T. R. Gress, Assistant Attorney General, State of Georgia, for the Attorney General.

[fol. 1507] [File endorsement omitted.]

Endorsed on cover: File No-. 34,624, 34,625, 34,626. N. Georgia D. C. U. S. Term No. 493: The State of Florida and A. S. Wells, E. S. Matthews, et al., etc., appellants, vs. The United States of America, Interstate Commerce Com-

mission, et al. Term No. 494: Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, appellants, vs. The United States of America, Interstate Commerce Commission, et al. Term No. 495: Wilson Lumber Company of Florida, appellant, vs. The United States of America, Interstate Commerce Commission, et al. Filed November 27, 1929. File No-. 34,624, 34,625, 34,626.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1929

No. 493

STATE OF FLORIDA and A. S. WELLS, E. S. MATHEWS, et al., etc., Appellants,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION et al., Appellees

No. 494

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY, Appellants,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION et al., Appellees

No. 495

WILSON LUMBER COMPANY OF FLORIDA, Appellant,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION et al., Appellees

STIPULATION

The Appellants having, as complainants below, offered in evidence a certified full copy of the record of the proceedings before the Interstate Commerce Commission in the matter entitled No. 18364, Georgia P.-S. Commission v. A. C. L. R. R. Co., (R. 190); and said certified full copy of said record having included a document described as "Report proposed by R. M. Brown, Examiner," (R. 191); and as this record as transmitted on appeal to this Court does not contain said "Report proposed by R. M. Brown, Examiner" (See R. 727); the parties by their respective counsel hereby stipulate and agree:

That the attached "Report proposed by R. M. Brown, Examiner," certified to be such by the Secretary of the In-

terstate Commerce Commission, is a true and correct copy of the document so offered and received in evidence in these proceedings in the Court below, and shall, subject to the approval of the Court, be incorporated as such in the record of this Court in these proceedings with like effect as though the same were the original.

Fred H. Davis, as Attorney General of the State of Florida, of Counsel for Appellants in No. 493. Henry P. Adair, Charles E. Cotterill, August G. Gutheim, H. Plant Osborne, Solicitors for Appellants in No. 494. J. V. Norman, Solicitor for Appellant in No. 495. John Lord O'Brien, for the United States of America, Appellee in Nos. 493, 494, and 495. J. Stanley Payne, for Interstate Commerce Commission, Appellee in Nos. 493, 494, and 495. Jas. A. Perry, Solicitor for Georgia Public Service Commission, Appellee in Nos. 493, 494, 495. Robt. C. Alston, Solicitor for Atlantic Coast Line Railroad Company, Appellee in Nos. 493, 494, and 495.

INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is true copy of report proposed by R. M. Brown, Examiner, filed August 15, 1927, in Case No. 18364, Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, the original of which is now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the seal of said Commission this 21st day of April, A. D. 1930.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

Geo. L. Rutherford.

Exceptions must be filed with Commission and copies served so as to reach opposing counsel on or before Sep. 6, 1927.

INTERSTATE COMMERCE COMMISSION

No. 18364

GEORGIA PUBLIC SERVICE COMMISSION

v.

ATLANTIC COAST LINE RAILROAD COMPANY

Submitted —— —, ——. Decided —— —, ——.

1. Interstate rates applicable on logs, except walnut, cherry, and cedar in carloads, from Florida points north of Jacksonville, Gainesville, Burnetts Lake, and High Springs, Fla., to destinations in Georgia found unreasonable, but not otherwise unlawful. Reasonable maximum scale of rates prescribed for the future.
2. Florida intrastate rates applicable on logs, except cedar, in carloads, not shown to result in undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce and interstate commerce, respectively, or in undue, unreasonable, or unjust discrimination against interstate commerce.

James A. Perry, W. R. McDonald, O. R. Bennett, Albert J. Woodruff and E. M. Price for complainant.

J. M. Simmons for Elberta Crate Company, intervener, and Champion Box Company; J. C. Jackson and H. A. Jackson for Jackson Brothers Lumber Company; J. E. Davies for self; and C. C. Giddens for J. N. Bray & Company.

Carl H. Davis, Robert C. Alston, and W. E. Kay for defendant.

Frank W. Gwathmey and Henry Thurtell for Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company, and Georgia Southern & Florida Railway Company; and J. A. Streyer for American Short Line Railroad Association, interveners.

A. S. Wells, E. S. Matthews, Mamie G. Eaton, R. Hudson Burr, Fred H. Davis, J. H. Tench and Fred Pettijohn for Florida Railroad Commission.

T. J. McGinn for Board of Trade and City of Savannah.

Charles E. Cotterill for Cummer Cypress Company, Wilson Cypress Company, and Putnam Lumber Company; Edward P. Sanborn and George L. Rutherford for Brooks-Scanlon Corporation; H. P. Adair for Putnam Lumber

Company; H. P. Osborne for Wilson Cypress Company; E. W. Mitchell for Cummer Cypress Company; J. S. Farish for Southeastern Forest Products Association; J. O. Cassidy and E. C. Green for Jacksonville Traffic Bureau; R. E. Mich for Southern Cypress Manufacturers' Association; and A. G. T. Moore for Southern Pine Association, interveners.

REPORT PROPOSED BY R. M. BROWN, EXAMINER

This proceeding was brought by complainant on behalf of Georgia log shippers. By complaint filed May 3, 1926, it is alleged that the rates on logs, in carloads, from points in Florida to destinations in Georgia, are unjust and unreasonable, and, as compared with Florida intrastate rates on logs, in carloads, are unjustly discriminatory and unduly prejudicial. It is also alleged that the Florida intrastate log rates cause undue and unreasonable advantage, preference, and prejudice as between Florida shippers in intrastate commerce, on the one hand, and Georgia shippers in interstate commerce, on the other hand, and undue, unreasonable, and unjust discrimination against interstate commerce. The commission is asked to prescribe reasonable, nonprejudicial, and nondiscriminatory rates for the future. Rates will be stated in cents per 100 pounds.

While complainant states that the object of its complaint is to secure reasonable rates on logs from all points on defendant's railroad in Florida to all destinations on that line in Georgia, the record shows that in so far as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry, and cedar, from points in that portion of Florida lying north of Jacksonville, Gainesville, Burnetts Lake, and High Springs, Fla., hereinafter referred to as north Florida, to destinations in Georgia for distances not exceeding 170 miles. The remainder of the State will be termed south Florida. Unless otherwise specified interstate rates as used herein will refer to defendant's rates on logs, except walnut, cherry, and cedar, applicable from north Florida points to Georgia destinations, and Florida rates will refer to the intrastate rates in issue.

Numerous shippers, carriers, and associations of shippers intervened. The Florida Railroad Commission filed no formal petition of intervention, but appeared in defense

of the Florida rates. The Elberta Crate Company intervened in support of the complaint. The Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company, Georgia Southern & Florida Railway Company, and the American Short Line Railroad Association, intervened in opposition to the continuance of the Florida rates on their present level and to the extension of such rates interstate into Georgia. The Jacksonville Traffic Bureau, Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, and the Putnam Lumber Company, hereinafter called the Florida interveners, intervened in support of the Florida rates. The Georgia-Florida Saw Mill Association (now Southeastern Forest Products Association), Southern Pine Association, and the Southern Cypress Manufacturers' Association also intervened in opposition to the complaint.

During the course of the hearing the Florida interveners, the Florida commission, and others interested in maintaining the present level of the Florida rates, moved that the complaint be dismissed on the grounds that evidence had not been submitted by or in behalf of complainant sufficient to constitute a cause of action within the power of the commission to remedy, and that the allegations of the complaint had not been sustained. The evidence of record justifies consideration of this case on its merits. The motion should be denied.

The interstate rates became effective August 15, 1925, as a part of a general revision of log rates throughout defendant's system. This revision is said to have been accomplished for the primary purpose of harmonizing defendant's interstate log rates south of Charleston, S. C. At the present time, however, such rates are relatively higher than defendant's intrastate log rates in the Southeast. The bulk of the log movement on defendant's system is intrastate. Intrastate rates other than those in Florida are not in issue.

The Florida rates are the result of certain so-called rate contracts made by the Jacksonville & Southwestern Railroad Company and defendant, respectively, with the Cummer Lumber Company and the Carpenter-O'Brien Company (predecessor of the Brooks-Scanlon Corporation).

In 1903 the Jacksonville & Southwestern entered into a

contract with the Cummer Lumber Company under the provisions of which it agreed to transport logs of the lumber company at certain specified rates for a period of 15 years. The log rates established pursuant to this contract are frequently referred to as the Cummer scale. Defendant acquired the properties of the Jacksonville & Southwestern in 1904 and as a condition precedent to the acquisition assumed the obligations of that company under its contract with the Cummer Lumber Company. This contract expired in 1918 and was not renewed. Defendant made a similar contract with the Carpenter-O'Brien Company in 1914. This agreement was for an indefinite period and was to be terminated only after the Florida timber then owned by the latter company, consisting of approximately 1,000,000,000 feet of pine had been transported. The movement was to be in trainloads of not less than 30 cars per day, or 60 cars every other day, Sundays and legal holidays excluded, minimum 50,000 pounds per car. It was stipulated that this contract should be subject to federal and Florida laws and to the order of any court or regulatory body of competent jurisdiction.

Pursuant to this contract defendant filed schedules with the Florida commission designed to extend the Cummer scale up to 150 miles. That commission refused to permit the proposed rates to become effective, as they were applicable only when the movement was in trainloads and were not available to all Florida intrastate log shippers. To meet these objections defendant published rates on the Cummer scale basis, effective October 30, 1914, applying generally on logs, except cedar, in carloads, on all its Florida lines for distances up to 150 miles. The record indicates that the rates as thus revised were established by defendant for the purpose of complying with its contractual obligations and not because it considered the Cummer scale proper for general application on log traffic intrastate in Florida. However, the record shows that defendant has never sought permission to increase the level of its Florida rates although the Cummer scale has been effective for many years and considerable traffic has moved thereunder. In 1916 the scale was extended for distances up to 160 miles and in 1918 to 170 miles. The Florida rates in issue are those covered by the Cummer scale as extended, modified by the general percentage changes.

The following statement shows the rates in issue and the earnings[1] per car thereunder:

Distance	Florida-Georgia interstate[2]		Florida intrastate[3]	
	Rate	Earnings	Rate	Earnings
Miles	Cents	Dollars	Cents	Dollars
5	2.5	12.50	1.71	8.55
10	3	15.00	1.71	8.55
15	3.5	17.50	1.71	8.55
20	3.5	17.50	1.71	8.55
25	4	20.00	1.71	8.55
30	4	20.00	1.71	8.55
35	4.5	22.50	1.71	8.55
40	4.5	22.50	1.71	8.55
45	5	25.00	2.10	10.50
50	5	25.00	2.10	10.50
55	5.5	27.50	2.10	10.50
60	5.5	27.50	2.10	10.50
65	6	30.00	2.30	11.50
70	6	30.00	2.30	11.50
75	6.5	32.50	2.30	11.50
80	6.5	32.50	2.30	11.50
85	7	35.00	2.30	11.50
90	7	35.00	2.30	11.50
95	7	35.00	2.60	13.00
100	7	35.00	2.60	13.00
110	7.5	37.50	2.80	14.00
120	8	40.00	3.20	16.00
130	8.5	42.50	3.20	16.00
140	8.5	42.50	3.40	17.00
150	9	45.00	3.40	17.00
160	9	45.00	3.40	17.00
170	9.5	47.50	3.70	18.50

[1]—Earnings computed on basis of loading of 50,000 pounds per car.

[2]—Applicable on logs, except walnut, cherry, and cedar, in carloads, minimum 40,000 pounds, from stations in north Florida.

[3]—Applicable on logs, except cedar, in carloads, minimum 50,000 pounds. These rates are published in amounts per car. They are here converted to basis per 100 pounds.

The level of the interstate rates is admittedly of little concern to the Florida interveners or the Florida commission. They neither advocate nor oppose the extension of the Florida rates interstate into Georgia, but do contend that the Florida rates are renumerative to defendant and [fol. 10] should not be changed. Defendant asserts its purpose to continue the Cummer scale, if permtited to do so, until the logs referred to in the Carpenter-O'Brien contract have been transported, but strongly opposes the use of the Cummer scale as a measure of reasonable rates between Florida and Georgia. The intervening carriers are not in sympathy with defendant's low Florida rates and are also opposed to any reduction in its interstate rates, contending if such a revision were made that competitive considerations would necessitate similar changes in their rates. Neither the intrastate nor interstate log rates of the carrier interveners are in issue.

Complainant's evidence was mainly in support of its allegations under sections 3 and 13. It did not attempt to indicate what would constitute a reasonable interstate scale in and of itself. In this connection it was stated that complainant was not attempting to say what should be the measure of the interstate rates, but that if the Florida rates were found just and reasonable they should be made to apply on log traffic between Florida and Georgia.

Several comparisons between the Florida rates and the interstate rates for distances up to 170 miles were submitted by complainant for the purpose of showing undue prejudice of log shippers located at Bainbridge, Albany, Thomasville, Quitman, Valdosta, and Waycross, Ga., and undue preference of Florida shippers located at certain selected Florida points. These comparisons were designed to show merely the rate advantage of the Florida shippers over those located in Georgia in the transportation of Florida timber. No movement under the interstate rates was shown and complainant admits that there is none.

While the record shows that there are 64 sawmills located along defendant's lines in Georgia within 170 miles of Florida, but few of the owners of these mills testified in [fol. 11] support of the complaint. Their testimony indicates that they are interested primarily in the reduction of the interstate rates rather than in the relationship be-

tween the Florida rates and the interstate rates. All but one admitted that an increase in the Florida rates would not benefit them and that it would not be feasible to ship logs from Florida to Georgia under defendant's present interstate rates. They stated, in general terms, that there is available timber in Florida which could be economically purchased and transported over defendant's line to their mills in Georgia if reasonable interstate rates were published. The location or quantity of such timber was not revealed.

For the purpose of showing that the Florida rates are relatively low, a cost study was submitted by defendant purporting to show for September, 1926, the estimated cost of transporting logs of the Brooks-Scanlon Corporation from Perry and Carbur, Fla., to Eastport, Fla., the distances being 166 and 144 miles, respectively. The cost per loaded car on this traffic was ascertained to be $19.13. The average weight of the logs was approximately 60,200 pounds per car. On this basis the revenue per car under the Cummer scale was $20.47, a margin of $1.34 per car over the estimated cost of service. Defendant stresses the point that its study covers trainload movements only, and that if the haul were in less than trainloads the cost of service would be higher. Most of the Florida intrastate log traffic is in trainloads. The less-than-trainload movement is unimportant.

The Florida commission introduced a similar cost study to show that the Florida rates are remunerative to defendant. The results reached differ radically from those of defendant. It was estimated that $14.62 represents the approximate cost per car of handling logs in trainloads between the above points, which deducted from the per car revenue leaves a net of $5.85 per car.

[fol. 12] Computation of the foregoing costs has necessarily required certain arbitrary assumptions not susceptible of accurate determination. It can not be said with any degree of certainty that figures thus computed indicate that actual cost of service. Careful consideration of these studies, however, warrants the conclusion that the revenue received by defendant from its Florida int-rstate log traffic, while relatively low, is reasonably compensatory. Under the circumstances a finding is not justified that the Florida

rates are so low as to cast an undue burden on interstate commerce.

Defendant, while not admitting that the interstate rates assailed are unreasonable, has submitted a proposal to revise them down to the level of the Alabama intrastate log rates effective in that State since June 1, 1925, pursuant to the order of the Alabama Public Service Commission. The scale proposed covers distances up to 450 miles and would apply on logs, except walnut, cherry, and cedar, in carloads, minimum 40,000 pounds, between north Florida and Georgia. This scale for distances up to 170 miles, is as follows:

Distance	Rate Cents
10 miles and less	2.5
20 miles and over 10	3
30 miles and over 20	3.5
40 miles and over 30	4
55 miles and over 40	4.5
70 miles and over 55	5
85 miles and over 70	5.5
100 miles and over 85	6
120 miles and over 100	6.5
140 miles and over 120	7
160 miles and over 140	7.5
170 miles and over 160	8

[fol. 13] The proposed rates are substantially similar to those prescribed in Pierpont Mfg. Co. v. S. Ry. Co., 50 I. C. C. 81, for application on logs from points in South Carolina south of Columbia, S. C., to Savannah, Ga., and in Southern Veneer Asso. v. A. C. L. R. R. Co., 62 I. C. C. 669, on poplar and gum logs from points in South Carolina to destinations in North Carolina. The proposed rates are on the same basis as those recently prescribed in Southern Cotton Oil Co. v. A. C. L. R. R. Co., 120 I. C. C. 190, on logs, except walnut, cherry, and cedar, from points on defendant's line south of Charleston to Savannah. Defendant has expressed the willingness to adopt these rates from interstate application over its entire system, excluding south Florida. It would also apply these rates intrastate in

North Carolina, South Carolina, and Georgia if permitted by State authorities.

The proposed scale would supersede not only the interstate rates in issue, but also those applicable on logs and short-length blocks from Florida points to Bainbridge, Thomasville, and Metcalf, Ga., for distances not exceeding 150 miles. The latter rates are not in issue and need not be passed upon in this proceeding.

Defendant also proposes to revise the existing south Florida interstate log rates down to a level approximately 15 per cent higher than the proposed north Florida interstate rates. The complaint does not attack the south Florida rates. It is therefore unnecessary for the commission to indicate its approval or disapproval of such rates at this time.

Several rate exhibits were submitted by complainant for the purpose of showing that the proposed interstate rates are unreasonably high when compared with defendant's intrastate log rates in various of the southeastern States; with the average of such intrastate rates, including the Alabama scale; and with the combined average of defendant's intrastate and interstate log rates applicable in the Southeast. Complainant's showing is not persuasive of the unreasonableness of the proposed rates. None of the intrastate rates were voluntarily established except those in Florida. Transportation conditions under the intrastate rates are not shown to be similar to those existing interstate between Florida and Georgia. The force of the comparisons is lessened by the inclusion in the averages of the Florida-Georgia interstate rates, which defendant proposes to reduce, and by the inclusion of the Florida rates, which are shown to be on a low basis.

As to certain of the North Carolina rates instanced it was shown that there is no movement of logs thereunder. The South Carolina rates apply in connection with a minimum of 24,000 pounds, while the proposed rates would apply in connection with a 40,000-pound minimum. Disregarding the differences in the minima, the average loading of logs under the South Carolina rates not being indicated, the rates proposed are for the most part lower than the South Carolina rates. In connection with the Georgia in-

trastate rates the record shows that complainant in 1925 ordered an upward revision in such rates, but later rescinded its order. Complainant's rate expert admitted that the higher rates thus prescribed, at that time, were on a reasonably low basis. Such rates were substantially the same as those now proposed by defendant for interstate application.

Evidence for the Florida interveners was to the effect that any material increase in the Florida rates will either cause them to move their plants to the timber or abandon operations. In either event defendant would lose considerable log traffic, the extent of which can not be readily estimated. It is doubtful if increased Florida rates would compensate defendant for the loss of such traffic. These interveners have expended millions in the development of their properties. Communities have grown up in the vicinity of the mills as a result of the lumber operations. Abandonment of the present mill sites would result in heavy losses not only to the lumber companies but also to their employees. It would cost the Brooks-Scanlon Corporation alone between $3,000,000 and $4,000,000 to move its plant from Eastport. That town, having a population of approximately 5,000, would probably lose most of its inhabitants, as practically every family at that point is said to be dependent upon the operation of the Brooks-Scanlon plant. Other Florida lumber companies and manufacturing communities would be similarly affected. Complainant contends that much of this character of evidence is not relevant to the issues of this proceeding. While such evidence is not necessarily conclusive, it nevertheless may properly be considered along with other facts of record in passing upon the merits of a case of this character.

Several experienced Florida lumber operators and timber cruisers were emphatic in their assertions that there exists no Florida timber in commercial volume within 170 miles of Georgia which could be acquired by Georgia log shippers, as all of such timber is owned by Florida mills. They stated that there are a few scattered areas of timber in north Florida held largely by farmers for their personal requirements, but that successful exploitation of these tracts, because of their limited extent, could only be accom-

plished by the use of portable mills operating in close proximity to the standing timber. They contend that it would be impracticable to ship logs to Georgia under defendant's present interstate rates, or even under rates as low as those of the Cummer scale.

Many of the north Florida mills ship a large percentage of their outbound product by water under relatively low rates. This, coupled with large-scale production, offsets the disadvantage of hauling logs for long distances by rail to the mills. Certain of the Florida interveners admitted that their mills are disadvantageously located and that they would move their plants to the timber if it were not for the heavy expenditures which would be necessitated by such a move. The evidence is convincing that few logs would be transported to Georgia over defendant's line if complainant were accorded interstate rates on the same level as the Cummer scale. It is probable that few, if any, logs would be hauled to Georgia under the present interstate rates if the Florida rates were increased to the level of such rates.

The Florida interveners, the Florida commission, and the Southeastern Forest Products Association contend that the commission is without power to regulate intrastate commerce as such, unless such commerce constitutes a restraint or burden or interstate commerce. They deny that the Florida rates unjustly discriminate against or unduly burden interstate commerce. Numerous decisions of the Supreme Court of the United States and of the commission were discussed at some length in support of these contentions. For example, in Wisconsin R. R. Comm. v. C., B. & Q. R. R. Co., 257 U. S. 563, the Supreme Court stated:

It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce * * *

In Hunter Bros. Mercantile Co. v. American Ry. Express Co., 107 I. C. C. 313, the commission said that

"Before we can require a change in the intrastate rate * * * it must appear that the intrastate rate injuriously affects interstate commerce in violation of the interstate commerce act. In some cases intrastate rates affect interstate commerce in ways so manifestly injurious as to make them subject to our control. In other cases the relation of an intrastate rate to movement of interstate commerce is so remote and insignificant that it may properly be disregarded. The decisive factor is whether or not the intrastate rate affects interstate commerce injuriously to a material extent."

The evidence upon this record does not establish the existence of undue preference of Florida intrastate shippers or localities or undue prejudice of Georgia interstate shippers or localities under the rates in issue. Nor does the record show that the Florida rates are on such a level as to result in any real discrimination against or obstruction to interstate commerce. No specific instance of hurtful discrimination or prejudice has been shown to result from the maintenance of the Florida rates. Testimony for complainant is to the effect that under certain assumed conditions such discrimination or prejudice might result, but positive proof in this respect is lacking. A finding of unlawful discrimination or undue prejudice can not be predicated on a mere assumption or assertion of their existence.

Complainant's allegation of unjust discrimination under section 2 was not pressed.

The commission should find that the rates on logs, except walnut, cherry, and cedar, in carloads, from points on defendant's lines in Florida north of Jacksonville, Gainesville, Burnett's Lake, and High Springs to destinations on its lines in Georgia for distances up to 170 miles are, and for the future will be, unreasonable to the extent that they exceed or may exceed the following maximum distance scale of rates in cents per 100 pounds, minimum 40,000 pounds:

Distance	Rate Cents
10 miles and less	2.5
20 miles and over 10	3
30 miles and over 20	3.5
40 miles and over 30	4
55 miles and over 40	4.5
70 miles and over 55	5
85 miles and over 70	5.5
100 miles and over 85	6
120 miles and over 100	6.5
140 miles and over 120	7
160 miles and over 140	7.5
170 miles and over 160	8

The commission should further find that the Florida intrastate rates assailed have not been shown to cause undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, or undue, unreasonable, or unjust discrimination against interstate commerce.

An appropriate order should be entered.

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FILE COPY

Office Supreme Court U.S.
DEC 24
CHARLES ELMORE

65867
SC

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. ~~498~~. 16

STATE OF FLORIDA; and A. S. WELLS, E. S. MATHEWS, ET AL., ETC., *Appellants*,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees*.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION.

JURISDICTION OF THE COURT.

FRED H. DAVIS,
As Attorney General of the State of Florida,

T. T. TURNBULL,
Solicitors for Appellants.

December 21, 1929.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 493.

STATE OF FLORIDA; and A. S. WELLS, E. S. MATHEWS, ET AL., ETC., *Appellants*,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees*.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION.

JURISDICTION OF THE COURT.

(A) Statutes.

Appellants rely upon Section 238 of the Judicial Code as amended by the Act of Congress of February 13, 1925 (Chap. 229, 43 Stat. 938); also the Urgent Deficiency Act of Congress of October 22, 1913 (Chap. 32, 38 Stat. 219, 220.)

(B) Decree.

The decree appealed from was dated April 17, 1929, and entered April 22, 1929 (R. 221-222). Appellant's Notice of Appeal was dated June 6, 1929, and was presented that same day (R. 223); the Order allowing said Appeal was dated June 6, 1929, and filed June 19, 1929 (R. 231); and proof of service on all adverse parties in interest of notices of said Appeal were filed June 17, 19, and 20, 1929 (R. 234, 245, 247).

(C) The Case and the Rulings.

This suit was brought (R. 2) by the Appellants (Complainants below) to enjoin, set aside and annul so much of an order of the Interstate Commerce Commission (R. 30) dated and filed August 2, 1928, and subsequently amended and clarified in certain particulars (R. 215, 216), in a proceeding had before said Interstate Commerce Commission, being No. 18364, *Georgia Public Service Commission, Complainant, v. Atlantic Coast Line Railroad Company, Defendant,* cited as 146 I. C. C. 717 (R. 19), which said order required the Atlantic Coast Line Railroad Company to establish and put in force in intrastate commerce within and throughout the entire State of Florida without exception, certain rates on logs which in said order were fixed as reasonable for transportation from origin points in northern Florida to destination points in Georgia in interstate commerce.

Circuit Judge Walker and District Judges Sibley and Dawkins comprised the specially-constituted Court and concurred in a unanimous opinion filed January 17, 1929 (*State of Florida v. United States,* 30 F. (2d) 116 (R. 56), and afterwards said Trial Court so con-

stituted by its order dated February 21, 1929 (R. 189), granted a re-hearing and allowed these Appellants to file a Supplemental Bill (R. 76); and subsequently, upon said re-hearing, the said Judges comprising said Court concurred in a unanimous opinion (*State of Florida v. United States,* 31 F. (2d) 580 (R. 217), and on April 22, 1929, entered the final decree dated April 17, 1929, by which said Trial Court denied the relief sought and dismissed the Bill and the Supplemental Bill (R. 221-222).

(D) Cases.

Baltimore & O. R. Co. v. United States, 277 U. S. 291.
St. Louis & O'Fallon R. Co. v. United States, 279 U. S. 461.
Houston, E. & W. T. R. Co. vs. United States, 234 U. S. 342.
New York v. United States, 257 U. S. 591.

Respectfully submitted,

FRED H. DAVIS,
As Attorney General of the State of Florida,

T. T. TURNBULL,
Solicitors for Appellants.

December 21, 1929.

Service of copy of the foregoing statement as to Jurisdiction on Appeal is hereby acknowledged this .....day of December, 1929.

.....
For United States of America, Appellee.

.....
Solicitor for Interstate Commerce Commission, Appellee.

.....
Solicitor for Atlantic Coast Line Railroad Company, Appellee.

.....
Attorney General, State of Georgia, for Georgia Public Service Commission, Appellee.

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In The Supreme Court of The United States

OCTOBER TERM, 1929

No. 493

STATE OF FLORIDA AND A. S. WELLS, E. S. MATTHEWS AND MAMIE G. EATON as and constituting FLORIDA RAILROAD COMMISSION,

Appellants,

-versus-

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA—ATLANTA DIVISION.

BRIEF FOR APPELLANTS.

FRED H. DAVIS,
Attorney General of the State of Florida.
Of Counsel for Appellants.

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BRIEF FOR APPELLANTS.

Official reports of the opinions of the Court below and of the Interstate Commerce Commission.

The opinions of the Court below upon hearing and rehearing are cited and dated and officially reported as follows:

State of Florida vs. United States, dated Jan. 17, 1929, 30 Fed. (2d) 116.

State of Florida vs. United States, dated Mch. 22, 1929, (on rehearing) 31 Fed. (2d) 580.

Report of the Interstate Commerce Commission accompanying the Order sought to be enjoined, set aside and annulled, is dated and cited as follows:

Georgia P. S. Commission vs. A[illegible] C. L. R. R. Co., dated Aug. 2, 1928, 146 I. C. C. 717.

STATEMENT OF JURISDICTION.

On January 27, 1930, this Court announced its finding that probable jurisdiction had been shown.

STATEMENT OF THE CASE.

This is an appeal from the Final Decree of the United States District Court for the Northern District of Georgia, Atlanta Division, (R-170) which refused certain injunctions prayed with regard to an order of the Interstate Commerce Commission and denied all relief prayed and dismissed the bill and supplemental bill (R-170).

At or about the time that the original bill was filed in the Court below by the Appellants here, there were two other suits filed in the same Court attacking the same order of the Interstate Commerce Commission, to-wit: Brooks-Scanlon Corporation, et al., versus United States, et al., and, Wilson Lumber Company, et al., versus United States, et al. The three suits were consolidated below for the purpose of hearing. Similar decrees were entered in all. Appeals were taken to this Court from all such decrees and all are now before this Court as numbers 493, (the case at bar), 494, (the Brooks-Scanlon case), and 495, (the Wilson Lumber Company case).

In view of the fact that the three cases involve much the same questions, the transcripts were certified and printed under the same cover. The record in the case at bar (the State case), appears first in the printed volumes. Then follows the record in the other two cases in their numerical order. The transcript of the proceedings before the Commission (including a narrative statement of the testimony there had) and various other exhibits and documents are printed but once, to-wit: in the State case, and are by reference made a part of the record in the other two cases

respectively by apt words and in the proper places.

The proceedings before the Interstate Commerce Commission were adversary proceedings instituted by complaint before the Interstate Commerce Commission, in which Georgia Public Service Commission was sole complainant, and Atlantic Coast Line Railroad Company was sole defendant (R. 193).

The gist of the complaint was the alleged unreasonable level of the carload Interstate rate of Atlantic Coast Line Railroad (and none other) on logs, except cherry, walnut and cedar, from points of origin in Florida to destinations in Georgia, and the relationship between that rate on the one hand, and the mileage scale of intrastate log rates of the same carrier, between points in Florida up to 170 miles, on the other hand.

The object of the complaint was declared to be (Section 3, R. 193):

> "To secure reasonable rates on logs from all points on the Atlantic Coast Line Railroad as hereinafter shown within the State of Florida to all destinations on the said Atlantic Coast Line Railroad in the State of Georgia, and to have removed any unjust discrimination or undue prejudice found to exist as provided in the Interstate Commerce Act."

The prayers of the complainant were (R-197): (a) that an order be made requiring the carrier to desist from the alleged violation of the act; (b) that the Commission determine and prescribe just, reasonable, non-discriminatory and non-prejudicial interstate rates from all points in Florida to all destinations in Georgia, and that such rates be no higher than the rates concurrently in effect for the same kind of property from producing points located within Florida, moving in intrastate commerce, to destinations in Florida; and (c) that such further orders be made as the Commission might consider proper in the premises.

The Atlantic Coast Line, the sole defendant named in the complaint, answered denying that its interstate rates were unjust and unreasonable, denying that it was res-

ponsible for any discrimination, denying any violation of the Interstate Commerce Act, as amended, and demanding that "it be hence dismissed." As the case was a typical *relationship* case, there were as usual various interventions, some by other carriers, and some by lumber manufacturers, but no intervenor sought to broaden the issues and, the orders of the Commission permitting intervention were upon the express condition that no evidence should be introduced by the intervenor which would unduly broaden the issue raised in the complaint, (Typical. R. 209). The State of Florida was served with notice and while it filed no formal answer, it appeared in the proceedings in due course.

At the hearing before the examiner, substantially all the evidence adduced by the Georgia Commission, the complainant there, consisted of rate comparisons. It was clearly shown that the sole purpose of the complaint was to extend the intrastate rate interstate. (See testimony of Georgia Rate Expert, R-417, 418, 419), (statement of Chairman, Perry, R-421).

And the defendant carrier made it plain that it was in nowise proposing any change in the Florida intrastate rate (voluntarily established and maintained by it) under the circumstances in which the State rate was applied in Florida but was opposing the extension of the State rate interstate or elsewhere (R. 495, 496, 719) (Commission's Rep. R. 794). It was shown that most of the carrier's intrastate log traffic moved in trainloads (R. 476, 477, 797) and that no substantial amount, if any, logs were moved by that carrier in interstate traffic (R. 796).

The carrier proposed for application between *north Florida* points of origin and Georgia destinations the interstate scale of rates which was ultimately prescribed by the Interstate Commerce Commission for the limited area above mentioned (R. 486). In the course of the proceedings the defendant carrier introduced an estimate of the cost of an intrastate log train movement over a single route from two points of origin near Perry in Taylor County, Florida, to a point of destination near Jacksonville, Florida, (R.523-526). Also it produced two letters written by the Florida

Railroad Commission respectively in 1914 and 1915 (at or about the time the Florida State rate was established and long before the several horizontal increases) in which the Florida Commission criticized the level of the Florida State rate so voluntarily established by the carrier (R. 473). The State in turn by its expert made a critical analysis and report upon the cost study of the defendant carrier and showed a materially lower cost of service than that shown by the carrier. (R. 633-641). At the Examiner's hearing the Florida Railroad Commission expressed the unqualified opinion that the State rate so voluntarily established and maintained by the carrier was clearly compensatory under the circumstances in which it was being applied (R. 629).

All of this of course was pertinent to the primary issue of the level of the interstate rate and to the incidental question of the relationship of the interstate and intrastate rates along the Florida-Georgia border.

The appellants at the conclusion of the Complainant's evidence (R. 467) and again at the conclusion of the Defendant's evidence (R. 562), and again at the hearing before the Commission (R. 792) expressly challenged the sufficiency of the evidence and the power of the Commission and in due course expressly asserted that any testimony taken by them was subject to that challenge (R. 562). But the Commission held that the evidence justified consideration of the case on its merits and denied the motions of the appellants to dismiss. (R. 792).

The report and order of the Commission is without parallel in this sort of a proceeding.

The Commission found in terms, that while the complainant assailed the rates from all points on defendant's lines in Florida to all points on its lines in Georgia,

> "the record shows that insofar as the interstate rates are concerned, relief is desired only with respect to rates on logs * * * from that portion of Florida lying North of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, hereinafter referred to as *North Florida*, to destinations in Georgia for *distances* not exceeding

170 miles" (italics ours). (R. 792).

The Commission by its report found to be reasonable a scale of distance rates for application interstate from *North Florida points of origin* to Georgia destinations *up to but not exceeding 170 miles.* Although "North Florida" as defined by the Commission (i. e. points North of and including Jacksonville, Gainesville, Burnett's Lake and High Springs), included only a small portion of the Florida lines of the Atlantic Coast Line Railroad, *the Commission prescribed no interstate rates elsewhere than from points of origin in that limited area.*

The Commission then proceeded to discuss the *level* of the Florida intrastate rate; the report quoted the defendant Coast Line as not considering that rate reasonably compensatory for intrastate traffic (although the Coast Line's expert testified that he made no such statement (R. 491.)) The Commission thereupon declared *the belief* of the Commission to be that it was manifest that the intrastate rates assailed were less than reasonably compensatory. The commission thereupon found that,

> "the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce.
>
> "We further find that said undue preference and advantage, undue prejudice, and unjust discrimination can and should be removed by the establishment of rates for intrastate application within Florida which shall correspond with the rates herein found reasonable for interstate application from Florida to Georgia.
>
> * * * *
>
> "An appropriate order will be entered" (R. 799)."

The formal order required the defendant carrier to apply the distance scale of rates from points of origin in the limited area in North Florida to Georgia destinations in interstate commerce, and proceeded to require the defendant Coast Line,

> "to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to exist in the *relation of intrastate and interstate rates*, and to establish, put in force, and maintain rates for the transportation of logs, * * * in car loads, * * * in intrastate commerce within the State of Florida which shall be the same as those prescribed in the next preceding paragraph hereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia." (Italics ours). (R. 801).

The report and order of the Interstate Commerce Commission were rendered by Division 4 of the Commission. The appellant in due course filed a petition for reargument and reconsideration directed to the whole Commission. (R. 841). There, among other things, the appellant asserted that the conclusion of Division 4 of the Interstate Commerce Commission with respect to the intrastate rates was unsupported by any competent evidence, was beyond the scope of the proceeding, was without lawful foundation and was an unwarranted invasion of the rights of the State of Florida reserved to it under the Constitution (R. 842, 856, 860, 861).

The appellant likewise specially asserted that the issues and the parties to the proceeding were so confined and restricted that the attempt on the part of the Commission to exercise any such general regulatory power over Florida intrastate rates was an invasion of the rights of the State reserved to it under the Constitution. (R. 861).

In due course the full Commission denied the petition for reconsideration and argument (R. 870). No attack was made by the appellant in any of the proceedings before the Interstate Commerce Commission or in the court below upon the interstate rate prescribed for the limited area in

North Florida. The position of the appellant throughout was that the interstate rate was purely a paper rate and for that limited area it was entirely within the power of the Commission in this proceeding to prescribe it.

In due course, to-wit: on November 27, 1928, the appellant (complainant below) filed its bill of complaint against the United States of America and Interstate Commerce Commission praying temporary and permanent injunctions enjoining, restraining and setting aside so much of the order of the Interstate Commerce Commission as required the Railroad Company to establish, put in force and maintain in intrastate commerce within the State of Florida the rates which were prescribed by the Interstate Commerce Commission above mentioned (R. 1). The bill, among other things, asserted that the action of the Interstate Commerce Commission constituted an unlawful invasion of the sovereign rights of the State of Florida reserved to it by the Federal Constitution (R. 12); that the action of the Interstate Commerce Commission constituted an unlawful exercise of power and was without warrant or authority under the Constitution (R. 13); that upon the record before the Interstate Commerce Commission there was no constitutional right or warrant for the exercise of any federal power in derogation of or superior to the State's power with respect to the regulation of intrastate commerce (R. 11); that the order respecting the intrastate rates was beyond the scope of the proceedings (R. 11); that the order was unlawful, arbitrary and unreasonable (R. 11); that the order was void because of its territorial scope (R. 12).

Answers were filed on behalf of the United States and Interstate Commerce Commission (R. 29, 41). The Georgia Public Service Commission intervened in defense of the order of the Interstate Commerce Commission and filed answer (R. 30, 31).

As pointed out above, the appellant's case below, that of Brooks-Scanlon Corporation (Number 494 here) and that of Wilson Lumber Company (Number 495 here) were consolidated for hearing and hearing was had before the specially constituted three-Judge statutory court.

The State contended, both in its bill and at the hearing, that the order of the Interstate Commerce Commission with respect to intrastate rates was State-wide in its scope notwithstanding that by the same report and order the Commission had limited to a small area in North Florida the scope of the proceedings had before it and the primary relief granted by it with respect to interstate rates.

But the Court below, in an elaborate opinion (R. 44), demonstrated by the decisions of this Court that such a construction would probably invalidate the whole order, and therefore, in order to sustain the order, it construed the report and order as prescribing intrastate rates only within the limited territory in North Florida for which interstate rates were prescribed. And the Court having so construed the report and order of the Commission and having examined the other questions raised by the pleadings, in its opinion (R. 44) sustained the order of the Interstate Commerce Commission and afterwards by its decree (R. 52), for the reasons stated in its said opinion, denied the relief prayed and dismissed the bill.

The order of the Commission as thus construed by the trial court was to take effect February 8, 1929. The Atlantic Coast Line Railroad, in disregard of the construction placed upon the order by the trial court, announced its intention of applying intrastate throughout the State of Florida the schedule of rates declared by the Court to be applicable only to the North Florida area.

That Railroad Company had not then intervened in the proceedings in the Court below and proceedings were instituted in the State Court by the State of Florida to enjoin the application of any intrastate rate other than the State intrastate rate, save in the limited area in North Florida, and suits were commenced in the Federal Courts in Florida by the Railroad Company against the Florida Railroad Commissioners to enjoin them from interfering with the application by the Railroad Company state wide in intrastate commerce of the new rate prescribed between all points in Florida by the Interstate Commerce Commis-

sion (Supplemental Bill and Exhibits thereto, R. 61 to 140, inclusive).

The litigation last above referred to is not here material in view of the subsequent order of the Interstate Commerce Commission and the subsequent rehearing by and opinion and decree of the Court below.

While that litigation was pending and one day before the effective date of the order, towit: February 7, 1929, without any notice to the appellant, the Interstate Commerce Commission entered an order the effect of which was to so change its order as of August 2, 1928, as to make the intrastate rate there prescribed applicable "within and throughout the entire State of Florida without exception" (R. 166, 167).

In due course petition for rehearing (R. 52) and supplemental bill (R. 61) were filed by the appellant in the Court below setting up the new fact, to-wit: the amendatory order of the Interstate Commerce Commission, which denied the construction placed by the Court below upon the former order of the Commission.

In due course petition for rehearing was granted, the cause re-opened and leave granted to file the supplemental bill and the Atlantic Coast Line Railroad Company was allowed to intervene in the cause (R. 148). Answers were duly filed to the supplemental bill by the defendants and interveners and in due course rehearing was had before the same trial court. It is here to be noted that at the rehearing the Atlantic Coast Line Railroad Company for the first time objected to the application within and throughout the State of Florida of the State intrastate rate which that Railroad Company had voluntarily established and was voluntarily maintaining.

By its opinion (R. 167-170), filed March 22, 1929, the trial court, notwithstanding its former opinion to the contrary, sustained the power of the Interstate Commerce Commission to prescribe for *intrastate commerce* within and throughout the State of Florida *without exception* the same scale of *interstate rates* which by the same order was prescribed for application in interstate commerce *only* from

points of origin in North Florida to destinations in Georgia. In reaching this conclusion the Court recognized that upon no ground could the order be sustained save upon the theory that the case before the Interstate Commerce Commission was a revenue case, a theory which the trial court, by implication at least, had also denied in its former opinion.

So for the reasons stated in its opinion the Court below by its final decree (R. 170) denied the relief prayed by the bill and supplemental bill and dismissed them.

This cause is before this Court on appeal from that decree.

The assignments of error here relied on for the reversal of the court below are as follows:

The District Court erred:

I.

In denying the relief prayed, and in dismissing the bill and supplemental bill.

II.

In failing and refusing to find that the report and order of the Interstate Commerce Commission of August 2, 1928, as amended February 7, 1929, constitute an unlawful exercise of power by said Commission and are without warrant or authority of or under the Constitution of the United States.

III.

In failing and refusing to find that there is not and cannot be any interstate commerce in logs over the Atlantic Coast Line Railroad from Florida to Georgia destinations on its line.

IV.

In failing and refusing to find that the compulsory

increase of the Florida intrastate rates on logs of the Atlantic Coast Line Railroad Company could not and did not result in the creation of interstate commerce in logs over the Atlantic Coast Line Railroad Company from Florida to Georgia.

V.

In failing and refusing to find that there was no substantial evidence of record before the Interstate Commerce Commission showing or tending to show that substantially similar circumstances and conditions surrounded the transportation of logs by Railroad on the one hand over the Atlantic Coast Line Railroad Company between points in Florida and on the other hand from origins on its line in Florida to destinations in Georgia.

VI.

In failing and refusing to find that there was no issue or controversy under the issues as restricted and defined at the hearing before the Interstate Commerce Commission as to the question that the lower level of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company caused or would cause unjust discrimination against interstate commerce as such in violation of Section 13 of the Interstate Commerce Act.

VII.

In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are unlawful because said Commission has hereby sought to embrace within the scope thereof all rates of the Atlantic Coast Line Railroad Company on logs between any stations on its line wholly within the State of Florida for any length of haul, not exceeding 170 miles, and in any portion of such State, although there was no case or controversy submitted to that tribunal or pending before it

involving in any way freight rates of the Atlantic Coast Line Railroad Company on logs within Florida, except for hauls of 170 miles and less over such railroad wholly within the so-called northern portion of the State of Florida.

VIII.

In failing and refusing to find that the said order as amended is invalid because of its territorial scope, in that said order as amended fixes the intrastate rates on logs between all points on all lines of the Atlantic Coast Line Railroad Company in Florida, whereas, the intrastate rate investigation in said proceedings before the Interstate Commerce Commission was limited to movements of logs between points on only a portion of the lines of said Atlantic Coast Line Railroad Company located in only a small area situated in northern Florida.

IX.

In failing and refusing to find that there was no evidence whatsoever before the Interstate Commerce Commission supporting or tending to support the conclusion that the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company would subject interstate commerce to unjust discrimination in violation of Section 13 of the Interstate Commerce Act.

X.

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because they seek to interfere with the voluntary continuance of the Florida intrastate rates on logs over its line by the Atlantic Coast Line Railroad Company without any substantial evidence showing or tending to show that the continuance of such Florida intrastate log rates in any way violates the provisions of Section 3 or 13 of the Interstate Commerce Act, and without any request or petition by said Atlantic Coast Line Railroad Company by the Georgia Public Service Commission, or by any other party to either the

Interstate Commerce Commission or to the Florida Railroad Commission to increase such Florida intrastate log rates, and without any other effort whatsoever by said Atlantic Coast Line Railroad Company to increase said rate.

XI.

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because there was no substantial evidence to support the finding that such Florida intrastate log rates are less than reasonably compensatory.

XII.

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because the facts of record before the Commission do not show that there is or would be any real or substantial injury to or restriction upon interstate commerce as a consequence of the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company.

XIII.

In failing and refusing to find that the report and order of the Interstate Commerce Commission constitute an unlawful invasion of the sovereign rights of the State of Florida reserved to it under the Constitution of the United States and of the citizens of the State of Florida and is without any warrant or authority of or under the Constitution of the United States, and, further that said Interstate Commerce Commission was and is without jurisdiction to enter said report and order.

XIV.

In failing and refusing to find that the issue as to

whether the lower level of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company cause or would cause unjust discrimination against interstate commerce in violation of Section 13 when construed with Section 15a of the Interstate Commerce Act, was eliminated from the proceeding before the Commission by the parties thereto.

XV.

In failing and refusing to find that the intrastate rates, investigated by the Interstate Commerce Commission, were not those contemplated by Section 13 (4) of the Interstate Commerce Act, as amended, because same were voluntarily initiated by the carrier, and therefore not "made or imposed by authority of any State", within the description of Section 13 (3) of said Act.

XVI.

In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are unlawful because there were no facts of record in such proceeding before the Interstate Commerce Commission showing, or tending to show, nor did the Interstate Commerce Commission find and facts sufficient to constitute unjust discrimination against interstate commerce in violation of the provisions of Section 13 of the Interstate Commerce Act.

XVII.

In holding that the order of the Interstate Commerce Commission of August 2, 1928, as amended on February 7, 1929, was within the issues sought to be investigated by said Commission.

XVIII.

In holding that said order of the Interstate Commerce Commission was made after full hearing by said Commission.

XIX.

In holding that the report and order of the Interstate Commerce Commission raising the State rate of the Atlantic Coast Line Railroad Company over its entire system in Florida on logs is justified in order to remove discrimination against general interstate commerce in that said Florida intrastate log rates are so low as to throw an undue burden on the revenues arising from interstate commerce.

XX.

In holding that "there was no territorial limitation in the complaint. No such limitation was put on the inquiry by any subsequent amendment or by any order of the Commission. * * * The rate was therefore in issue for all the purposes of Section 13, although there was no express prayer for its enhancement, and no express allegation that it was unprofitable to the carrier."

XXI.

In holding that "in rejecting the conclusion of slight net income asserted by the witnesses, the Commission did not rule out the basic facts shown, but was at liberty to supplement them and construe them for itself, and make its own conclusion from them."

XXII.

In holding that the Interstate Commerce Commission, in reaching its conclusion respecting the Florida intrastate

rates on logs, was entitled to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions, and the railroads must have in such matters."

XXIII.

In the holding that "on the face of things the log rate is too low, and likely to burden the carrier."

XXIV.

In holding that "we cannot say that the order is without evidence to sustain it, on the ground that the former state rate was an undue discrimination against general interstate commerce over the Coast Line Railroads."

XXV.

In holding that the complainants in their reply to the exceptions of said Georgia Public Service Commission to the report of the examiner of the Interstate Commerce Commission failed to contend that the finding of said report with respect to the burdensomeness of said rate was foreign to said investigation.

XXVI.

In holding that the complainants in their application for a rehearing before the entire Interstate Commerce Commission failed to contend that the burdensomeness of the Florida intrastate rate was foreign to the investigation had by said Interstate Commerce Commission.

XXVII.

In failing to suspend, annul and permanently enjoin the Commission's order of August 2, 1928, as amended from time to time in order to extend the effective date

thereof, and as changed in language for the purpose of clarification on February 7, 1929, insofar as said order applied to rates on the intrastate transportation of logs in Florida.

The Interest of the State of Florida in the Case at Bar.

The interest of the State of Florida in the case at bar is in protecting its sovereignty from the unconstitutional, unlawful, arbitrary and oppressive exercise of the Federal power resulting from the State-wide order of the Interstate Commerce Commission.

Summary of the Questions to be Discussed in this Brief.

As has been stated above, the three causes here on separate appeal were consolidated for the purpose of hearing by the court below and are here upon a common record. Careful and elaborate briefs are being filed by the appellants in the two cases which are companion to the case at bar in this court. The arguments made and authorities cited in those briefs are common to the State of Florida as well as to the appellants upon whose particular behalf they were filed. The State of Florida relies upon the several points made and the authorities cited in those briefs and now asks that it may have the benefit of them without the unnecessary repetition of them in this brief. In the particular discussions in this particular brief we propose to confine ourselves to the aspects of the proceedings in the Interstate Commerce Commission and in the court below which are particularly applicable to the relative rights of the State and National Governments under the Constitution, the laws of Congress, and the decisions of this Court, avoiding duplication of the matter contained in the other briefs as far as possible. Those relative rights will be discussed under the following headings:

Point 1. The Primary issue before the Commission was the interstate rate; the intrastate rate was involved only incidentally in its relationship to the interstate rate.

Point 2. The proceedings before the Interstate Commerce Commission were adversary proceedings of limited scope in which it was unlawful for the Commission to exercise power under Section 13 (4) in its relation with Section 15-a.

Point 3. It was unlawful for the Interstate Commerce Commission to exercise Federal power with respect to intrastate rates beyond the sphere in which interstate rates were prescribed.

Point 4. The proceeding was not appropriate nor was the hearing sufficient.

Point 5. The power of the Commission to fix intrastate rates was challenged throughout.

Point 6. Neither the showing before the Interstate Commerce Commission nor the investigation made by it was sufficient to warrant the Commission in imposing its will upon a sovereign State statewide and without exception.

Point 7. An order of the Interstate Commerce Commission must be set aside even when in form within the delegated power if it is shown that in substance there has been a mis-use or abuse of the power delegated.

Point 8. Comparison of the case at bar with the Wisconsin Rate Case, 257 U. S. 563, 66 L. Ed. 371, demonstrates that the prerequisites present in the Wisconsin case for superseding the State Power statewide are absent here.

POINT 1.

> The primary issue before the Commission was the interstate rate; the intrastate rate was involved only incidentally in its relationship to the interstate rate.

The defendant carrier, the Atlantic Coast Line Railroad Company, has approximately 2,200 miles of track in Florida (R. 154) the intrastate commerce over all of which is subject to regulation by the State of Florida under its

reserved powers. The Interstate Commerce Commission in its report (R. 792) found as a fact:

> "While the complainant assails the rates from all points on defendant's lines in Florida to all points on its lines in Georgia the record shows that insofar as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry and cedar, from that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, hereinafter referred to as north Florida, to destinations in Georgia for distances not exceeding 170 miles."

Accordingly the Interstate Commerce Commission prescribed interstate rates only from the limited area of north Florida as above defined, for distances not exceeding 170 miles.

A line connecting the four points named in the order of the Interstate Commerce Commission would constitute an irregular crescent the northernmost portion of which would be approximately 35 miles from the Georgia boundary at Jacksonville and the southernmost of which would be about 60 miles from the Georgia boundary at Gainesville.

Drawing a line intersecting the southernmost of the four points named above east and west across the State of Florida from the Gulf of Mexico to the Atlantic Ocean, less than one-fourth of the Florida mileage of the defendant carrier lies north of such line. Less than one-eighth of the defendant carrier's Florida lines extend northwardly from the four points in question. The southernmost point on the defendant carrier's lines in Florida is nearly 300 miles south of Gainesville.

Thus, insofar as interstate rates were concerned, there was at least three-fourths or more than 1,600 miles of the defendant carrier's Florida lines upon which the Federal power was not imposed in that proceeding because, said the Commission in effect, no relief was desired as to that.

Of course, when it came to the prescribing of the in-

terstate rate the Interstate Commerce Commission was wholly within its own domain and was limited only by its own judgment, the evidence, and the scope of the relief sought, and the latter the Commission found to be limited as above stated.

But when it came to the invasion of that domain which is primarily the domain of the State, to-wit, intrastate rates, the Interstate Commerce Commission was not content to limit its field of operation to the one-eighth or one-fourth of the defendant carrier's lines which were covered by the interstate order but reached out and prescribed intrastate rates for every foot of the 2,200 miles of rails in Florida and ordered the defendant carrier to put in force and maintain the prescribed intrastate rates, "within and throughout the State of Florida without exception".

Not only was the territorial scope of the intrastate part of the order more than three times or more than six times (as the case may be) as broad as the interstate order but there was no "saving clause" of any kind, character or description in it. The evident purpose and intent of the order as finally "clarified" was to take from the State every vestige of its sovereign power with respect to the regulation of intrastate rates between all stations on the defendant carrier in Florida under all circumstances and under all conditions "without exception".

And this action was taken against a State rate which was shown by the record to have been voluntarily initiated by the carrier and voluntarily maintained by it for nearly fifteen years without any complaint, directly or indirectly, to the State with respect to it, and no attempt to increase it in this proceeding. And this was done not pursuant to the Interstate Commerce Act, as amended by the Transportation Act of 1920, but in violation of the terms, intent and meaning of the Act as amended and in violation of the plain terms of the Federal Constitution.

POINT 2.

The proceedings before the Interstate Com-

merce Commission were adversary proceedings of limited scope in which it was unlawful for the Commission to exercise power under Section 13 (4) in its relation with Section 15a.

As has been pointed out above the proceedings before the Interstate Commerce Commission were adversary proceedings initiated by the complaint in which the Georgia Public Service Commission was sole plaintiff and the defendant carrier was sole defendant.

The Court below sustained the order respecting *intrastate* rates upon the sole ground that the complaint before the Commission had sufficiently invoked the powers of the Interstate Commerce Commission under Section 13 (4) of the Interstate Commerce Act as amended, and Section 15-a of the same Act, to authorize that Commission to enter the state-wide order in question.

We submit that there was no basis laid either in the pleadings or in the proofs for invoking this extraordinary power under the "dovetail relations" of Sections 13 (4) and 15-a of the Interstate Commerce Act. We say that the revenue power was never involved at all in the proceedings. And we say further that even if it were brought in question, it was in such a remote and incidental way as to make the exercise of that power an arbitrary and unlawful act on the part of the Interstate Commerce Commission. An examination of the complaint (R. 193) leaves not the slightest doubt that the thing brought in issue was the level of the Florida *Interstate* Rate, north-bound from Florida to Georgia and that incidental to that primary issue was the subordinate issue of the relationship between the *interstate* rate and the *intrastate* rate.

It is true that in a single paragraph of the complaint (Par. 11, R. 196), the complainant in one and the same sentence charges that the Florida rate gives undue and unreasonable preference and advantage to *intrastate* shippers in Florida and are unduly prejudicial and disadvantgeous to shippers in Georgia and cause undue, unreasonable and

unjust discrimination against *interstate* commerce in violation of Section 13 of the Act.

But upon the face of this paragraph alone it is patent that this bare conclusion of law is asserted incidentally to the *preferential* and *prejudicial* feature of the complaint and is not supported anywhere by any allegation that the Florida *intrastate* rates are too low or are unreasonable or in any way burden the revenue of the carrier. On the other hand with respect to the *interstate* rates by Par. 10 of the complaint (R. 196) they are expressly asserted to be *unjust* and *unreasonable* and that attack is supported by numerous and detailed averments of fact throughout the complaint. The primary relief asked by the prayers of the complaint is the establishment of reasonable, non-discriminatory and non-prejudicial *interstate* rates which shall be no higher than the rates concurrently in effect *intrastate*. All other relief prayed is incidental to the primary relief sought. No relief whatsoever is prayed with respect to the level of the intrastate rates.

That this is true is clearly demonstrated by the conduct and statements of the complainant and the defendant during the course of the proceedings. Not one time but several times Mr. Price, rate expert of, chief witness for, and associate counsel of the Georgia Commission in the proceedings before the Examiner in terms made it clear that the end sought to be achieved by the proceedings was the extension of the then effective *intrastate* rate *interstate* into Georgia (R. 417, 418, 419). He also declared in terms that the proceeding was "not a revenue case" (R. 417) and the Chairman of the Georgia Commission who was its chief counsel by statements of record (R. 421) took this same position.

As has been shown, the defendant by its answer defended both rates within the sphere of their operation and demanded dismissal of the complaint (R. 199, 200).

While the defendant carrier proposed a scale of rates for *interstate* application it expressly declared that it made no proposal for *intrastate* rates (R. 495) and the report of the Commission itself finds that the carrier in that proceed-

ing before the Commission made no attempt to increase the *intrastate* rate (R. 794).

Not only is it true that the Interstate Commerce Commission did not make an order as it might have done under Section 15-1 of the Act extending the scope of the proceedings, but by its orders permitting intervention expressly prohibited the broadening of the scope of the proceedings (Typical R. 209).

We submit, therefore, that the analysis of the complaint and answer, and the consideration of what was said and done by that complainant and the principal defendant under it, leaves no doubt that the primary issue was the level of the *interstate* rate, and that the *intrastate* rate was involved only incidentally, and then only with respect to its relationship with the *interstate* rate.

But, if there were any doubt upon that subject, the decisions of this Court required that doubt to be resolved against the exercise of the Federal power in derogation of the State power. This Court has held more than once that ambiguity in an Act of Congress affecting the relative powers of the National and State governments must be resolved against the Federal power and in favor of the State power, and has applied the same rule even more rigorously to orders of the Interstate Commerce Commission.

> Illinois Central R. R. Co. v. Public Utilities Commission, 245 U. S. 491; 62 L. Ed. 425, (1918).

Of course, the same rule would apply in determining whether the powers of the Interstate Commerce Commission have been lawfully invoked and exercised in pleadings filed and proceedings had before the Commission.

POINT 3.

It was Unlawful for the Interstate Commerce Commission to Exercise Federal Power with Respect to Intrastate Rates Beyond the Sphere in which Interstate Rates were Prescribed.

The complaint and the proceedings before the Interstate Commerce Comission clearly show that the relief sought by the Georgia Commission with respect to intrastate rates (whatever that relief may have been) was not independent relief but dependent relief and incidental to and co-terminous with the primary relief sought, to-wit, the establishment of reasonable interstate rates. And the Commission having found that the primary relief sought, to-wit, the establishment of reasonable interstate rates, was limited to the small area in north Florida and having confined the exercise of the direct Federal power to that small area alone it was unlawful for that Commission to exercise the incidental Federal power beyond the limits of the area in which the direct power was exercised. And the power under section 13 in its "dovetail relation" with section 15-a of the Interstate Commerce Act is not a *direct* power but is an *incidental* power, and while it is exercised under different circumstances it is in its essence the same power that was invoked in the original Shreveport case.

Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co. 257 U. S. 563, 66 L. Ed. 371.

Colorado v. United States, 271 U. S. 153; 70 L. Ed. 878.

And it is to be conclusively presumed that Congress did not intend this incidental power to be exercised with respect to intrastate rates except (a) in territory where the direct Federal power with respect to interstate rates and rate levels has been exercised, and (b) where a *substantial* evil has been clearly shown to exist, and (c) then only to the extent that it is necessary to remedy the particular evil in the particular case in hand. And so having neither considered nor fixed the level of the interstate rates for application elsewhere than the small area in north Florida, it is unthinkable that the Interstate Commerce Commission should possess or exercise the incidental power to fix "without exception" the intrastate rates "within and throughout" the vast area and over the vast mileage not included in its interstate order.

And particularly is this true when we consider that

the complainant in the proceedings before the Interstate Commerce Commission, the State of Georgia, and other states in the Southeastern group were shown by the evidence of the Georgia Commission itself (R. 394-395) to have materially lower intrastate rates than the rate so prescribed State-wide for Florida; and that Georgia and the other States included by the Interstate Commerce Commission in the "Southeastern group" are left free and untrammeled to regulate their intrastate log rates.

POINT 4.

The Proceeding was Not Appropriate Nor was the Hearing Sufficient.

We have shown that the thing primarily in issue was the level of the interstate rate, and that the intrastate rate was only involved in a subordinate way under the incidental power of the Interstate Commerce Commission. We have shown that the Commission found as a fact that relief sought as to the interstate rate (the primary issue) was confined to the small area in north Florida, and that the Commission limited the relief granted to that small area.

The proceeding was brought for the benefit of Georgia shippers who could have no interest, direct or indirect, in the application of Section 15-a of the Act. Only a single carrier was impleaded. We insist that it was never the intention of Congress by Section 13 (4) of the Act or otherwise, to empower the Commission to enter any order prescribing intrastate rates statewide without exception in any such proceeding as this. During the proceeding before the Commission and prior to the conclusion thereof, the Commission under the power expressly conferred by Section 15-1 might have made "an order for investigation and hearing * * * in extension of" (the pending complaint). This the Commission did not do. The fact that it was expressly authorized by the Act to enter an order "in extension of any pending complaint" implies that such an order is *necessary* where the nature of the complaint is inappropri-

ate to the extended investigation. Indeed, the Commission not only did not exercise this power, but in the various orders permitting intervention, permitted them upon express condition that the issues be not broadened.

The rules laid down by the Interstate Commerce Act with respect to the procedural and substantive rights of persons called before it, as well as the Constitution itself, guarantees to such persons due process of law. And the Commission, in the exercise of quasi-judicial power is bound, just as any other tribunal acting in a quasi-judicial capacity is bound, to observe "those general rules established in our system of jurisprudence for the security of private rights". Hagar vs. Reclamation District No. 108, 111 U. S. 701, 28 L. Ed. 569.

In the Hagar case the Court said:

> "It is sufficient to observe here, that by 'due process' is meant one which, following the forms of law, is appropriate to the case and just to the parties affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought."

The investigations authorized under the "provisions of this Act" are manifold and the various kinds of relief authorized by the Act are numerous.

Among various other things they include rates, fares, charges, classifications, regulations, practices, etc. It is manifest therefore, that the Act itself, as well as organic law, contemplates that every investigation in every proceeding and every hearing shall be adequate and appropriate to the particular proceeding in hand. This being true, it is obvious that a proceeding, investigation and hearing adequate and appropriate to one particular thing may be utterly inadequate and inappropriate to another particular thing which may otherwise be within the jurisdiction of the Commission.

Therefore, we say that the Interstate Commerce

Act contemplating as it does different kinds of proceedings and different kinds of hearings and different kinds of relief to be afforded thereon, did not contemplate that state sovereignty be brushed aside save in a proceeding which was plainly appropriate and adequate to that end nor unless nor until it had been made "clearly manifested" in such proceeding and at such hearing that it was necessary for the protection of Interstate Commerce for the state power to be superceded.

We submit that the only appropriate proceeding for the entry of an order prescribing intrastate rates for application "within and throughout" a state "without exception" is in a direct attack upon the level of the intrastate rate in a proceeding instituted either (a) upon the petition of the carrier, or (b) upon an order of the Commission entered for that purpose itself either instituting such proceeding or extending the scope of a pending complaint for that purpose.

But even if it be conceded that the "new power" conferred upon the Commission by Section 13 (4) authorizes the Commission in conjunction with its duty under Section 15-a of the Act, to prescribe intrastate rates in a proceeding where the level of the interstate rate was the primary issue, then it might be conceded that under the incidental power, upon sufficient hearing and sufficient evidence the state rate might be fixed within the field of operation in which the interstate rate was fixed; but it is manifest that an intrastate order statewide "without exception" is not appropriate to a proceeding where the primary "relief desired" and granted covered only a small portion of the state.

Any other rule than that above stated would be oppressive of both the state power and the rights of private parties. For that would mean that in *any proceeding* involving primarily the level of an interstate rate, fare, charge, classification, regulation or practice in any portion of a state however small the intrastate rate, fare, charge, classification or practice (any or all) prevailing hundreds of miles distant from the field of operation of the primary relief sought might be regulated as an incident to the exercise

of the primary power; and thus no state and no man would be secure in their respective rights and the protective features of the Constitution and of the Act itself would be destroyed.

POINT 5.

The Power of the Commission to fix Intrastate Rates was Challenged Throughout.

The District Court on the rehearing seemed to think that the appellants in some way had recognized that the hearing was full because, so said that Court in effect, after the examiner had found that the Florida intrastate rates were not unremunerative nor burdensome, the appellants discussed that finding in their reply to the exceptions of other parties to the examiner's report and did not contend that such evidence was foreign to the investigation. Also, because, so said the Court in effect, after the Division 4 had made its order and when the appellants demanded of the whole Commission a re-consideration and a rehearing upon the order, the appellants did not ask for an opportunity to present further evidence and merely asked (*sic*) for a reargument on the evidence already taken. Before discussing what was said in the documents referred to we may say that in no such way as this can sovereign state power and rights be waived nor power conferred upon the Commission which it has neither under the Constitution nor under the Act.

In its reply to the exceptions to the examiner's report, appellants did discuss the evidence therein referred to and did not at that time and in that document expressly declare that that evidence was foreign to the investigation. At that time no living person could have assumed the remote possibility that the Commission would attempt to exercise its incidental power respecting intrastate rates in a broader field than that in which relief was "desired" with respect to the level of interstate rates, the primary issue. Indeed, the trial court in its first opinion declined

to believe that the Commission had done so. With respect to the petition for reconsideration and rehearing filed by the appellants before the whole Commission after the order had been rendered by Division 4 of the Commission, this Court will observe that these appellants in terms asserted that the intrastate order was beyond the scope of the proceeding, was without lawful foundation, was an unwarranted invasion of the sovereign rights of the state, and was not supported by any competent evidence (R. 842, 856, 860, 861).

But this is not all; at the conclusion of the complainant's evidence, the appellants filed a written motion (Side R. 210, 467) expressly challenging the power of the Commission and the sufficiency of the evidence, and expressly reserving its rights in that connection. Again, at the conclusion of the defendant's evidence (R. 562) this challenge was asserted and an announcement was made that any testimony offered by the appellants was without prejudice to that motion. Again, the Commission's own report (R. 792) shows that this challenge was insisted upon at the hearing before Division 4. And so we say there was no recognition, express or implied, of the power of the Commission to enter a statewide order respecting intrastate rates or any affirmative or other order with respect to such rates.

POINT 6.

Neither the Showing before the Interstate Commerce Commission Nor the Investigation made by it was Sufficient to Warrant the Commission in Imposing its Will upon a Sovereign State Statewide and Without Exception.

The primary control of and jurisdiction over intrastate rates is, of course, within the reserved powers of the State; and the Transportation Act, 1920, recognizes that fact by the re-enactment of the proviso with respect to the

regulation of traffic "wholly within a state".

It is axiomatic that *any* order of the Commission, even one involving only the exercise of the direct power with respect to interstate rates must fall unless it is supported by substantial evidence actually, physically present before the Commission in that particluar proceeding.

> Interstate Commerce Commission v. Louisville and Nashville R. Co. 227 U. S. 88, 57 L. Ed. 431.

We insist that not only was there no substantial evidence before the Commission upon which to base the intrastate order statewide and "without exception" but that there was no sufficient investigation and no evidence upon which to base any such order.

We submit that the very report of the Commission itself implies that this is true when it says (R. 792):

> "While the complaint assails the rates from all points on defendant's lines in Florida to all points on its lines in Georgia the record shows that insofar as the interstate rates are concerned relief is desired only with respect to rates on logs * * * from that portion of Florida lying North of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, hereinafter referred to as north Florida, to destinations in Georgia for distances not exceeding 170 miles".

The level of interstate rates being the primary thing in issue and the Commission in its formal order prescribing rates having condemned the intrastate rate only with respect to its *relationship* to the interstate rate, it seems obvious from the report of the Commission itself "that the record shows" that the investigation by the Commission and the evidence before the Commission with respect to the subject matter of the investigation were limited to the small area in north Florida.

But, before the Commission, a subordinate tribunal of the Federal Government, can supersede the state power and impose its will upon the state within and throughout the state "without exception" there must be demonstrated to it

and be demonstrable by it something more than is required by the so-called "substantial evidence" rule applicable to orders made by the Commission in the exercise of the direct Federal power respecting interstate rates.

It was not the intent of Congress that the rights of the sovereign states should be finally concluded by a subordinate Federal body by the application of any such rule as the so-called "substantial evidence" rule.

On the contrary, we insist that the broad principles enunciated by this Court clearly demonstrate that whenever and wherever there is doubt whether the Federal power should be exercised so as to supersede the state power in matters affecting intrastate commerce that doubt must be resolved against the Federal power and in favor of the state power.

Under the decisions of this Court doubtful or ambiguous provisions of an Act of Congress itself with respect to the exercise of Federal power in derogation of State power under the commerce clause, are construed against the Federal power and in support of the reserved power of the states. The congressional intent to supercede the state power must be "clearly manifested". Even a more rigid rule is applied with respect to orders of the Interstate Commerce Commission, the subordinate body. Not only must the intent to supersede state power there be "clearly manifested" but those orders must conform to "a high standard of certainty".

> Illinois Cen. R. R. Co. v. Public Utilities Com., 245 U. S. 493, text 510, 62 L. Ed. 425, text 438.
>
> American Express Co. v. South Dakota, 244 U. S. 617, text 625, 61 L. Ed. 1352, text 1358.
>
> Railroad Com. of Wisconsin v. Chicago, B. & Q. R. R. Co., 257 U. S. 563, text 580, 66 L. Ed. 371, text 380.

Since the Acts of Congress are to be so construed that every intendment is against the exercise of the Federal power when in derogation of the state power it is obvious that Congress neither by the Transportation Act, 1920, or

otherwise, *intended* that the Interstate Commerce Commission should exercise the Federal power in derogation of the State power except and unless the evidence actually before the Interstate Commerce Commission "clearly manifested" to a "high standard of certainty" that the particular case in hand actually fell within the class in which the Commission by the Act of Congress is authorized to exercise the Federal Power.

And among the things which must be "clearly manifested" to a "high standard of certainty" is that there is "a real discrimination against and obstruction to interstate commerce". Wisconsin case, supra.

We confidently assert that not only does the record here show that these jurisdictional matters were not "clearly manifested" to "a high standard of certainty", but shows that there was no sufficient investigation and substantial evidence whatever to support the order.

POINT 7.

An Order of the Interstate Commerce Commission Must Be Set Aside Even When in Form Within the Delegated Power if it is Shown that in Substance there has been a Misuse or Abuse of the Power Delegated.

The principle asserted in the foregoing caption is well sustained by the decisions of this Court.

Interstate Com. Com. v. Union P. R. Co. 222 U. S. 541, text 547.

The intent of Congress as ascertained from the terms of the Act is the thing that is the law. Section 13 of the Interstate Commerce Act makes elaborate provision for conferences and joint hearings between the Commission and the state authorities having jurisdiction over carriers which are made subject to the provisions of the Interstate Commerce Act. This Court has condemned in no uncertain

terms harsh and unnecessary exercise of Federal power in derogation of the state power.

Lawrence v. St. Louis, San Francisco Ry. Co. 274 U. S. 588, 71 L. Ed. 1219.

In the case at bar the Interstate Commerce Commission merely gave the usual notice to the State of Florida and disregarded every other provision of Section 13 with respect to co-operation with and deference to state authority. It did not confine the scope of the intrastate order to the limited field of operations of the interstate order; it did not fix a maximum alone or a minimum rate alone; it did not order a general or special investigation of the level of the intrastate rate; on the contrary, the thing that the Commission did was to enter an order requiring the carrier to put in force and *maintain* a particular intrastate rate within and throughout the state of Florida *without exception,* thus leaving no field of operation whatsoever for the exercise of the state power under any circumstances or under any condition.

We submit that such drastic action was contrary to the intent of Section 13 of the Act as amended, and even if within the form of delegated power is so far beyond the substance as to be an arbitrary abuse of power which this Court will not sustain.

POINT 8.

Comparision of the Case at Bar with the Wisconsin Rate Case, 257 U. S. 563, 66 L. Ed. 371, Demonstrates that the Prerequisites Present in the Wisconsin case for Superseding the State Power Statewide are Absent Here.

This great case and its companion case, the New York case (257 U. S. 591) were relied upon by the court below in sustaining the order of the Interstate Commerce Commission. We here submit, as we submitted below, that not

only are those cases no authority for the anamolous order entered by the Commission, but under the broad principles laid down in them and particularly in the Wisconsin case the order must be enjoined.

We will now consider in parallel columns the fundamentals of these two cases.

WISCONSIN CASE.	CASE AT BAR.
(a) The Wisconsin case was a general investigation initiated by the Interstate Commerce Commission itself where the level of the State fares was the direct and sole issue.	(a) The case at bar was initiated by a complaint primarily directed against the level of the interstate rate, and the intrastate rate was involved only incidentally in its relation to the interstate rate. The sole complainant was the State of Georgia and the complaint was brought solely on behalf of Georgia shippers.
(b) All the interstate carriers within Wisconsin were named as respondents and the order prescribed the same level of intrastate rates for all of the interstate carriers within the State.	(b) A single carrier was made party defendant and relief was sought only against that single carrier, and the intrastate rate of that carrier alone was affected by the order notwithstanding that other carriers in Florida were shown to have numerous different kinds of intrastate log rates including point to point rates which were different from the intrastate rate of the defendant carrier.
(c) In the Wisconsin case it was shown that the State	(c) The record here shows that the State rate was vol-

rate had been imposed by the mandatory requirement of a State statute and that the carriers had made application to State authority to increase their intrastate rates to the level of the general interstate rate which had been prescribed Statewide throughout Wisconsin and throughout the carrier group and that the State authority had refused to grant any relief.

untarily put into effect by the carrier and voluntarily maintained for nearly 15 years (except for the horizontal increases) and that at no time and no place had the carrier applied to State authority for any modification of it and that no modification of it was sought by the defendant carrier in the proceedings before the Interstate Commerce Commission.

(d) The Interstate Commerce Commission found as a fact from the evidence before it that the interstate rate (shortly theretofore prescribed by the Commission for all interstate carriers *throughout* Wisconsin and throughout the carrier group) was necessary to fulfill the requirement as to *net income of that particular railroad group* under Section 15a of the Act.

(d) No such finding here. No evidence upon which it could have been made and no investigation of any kind with respect to it.

(e) The Interstate Commerce Commission from the evidence before it found as a fact that the net difference in the income of all the Wisconsin carriers which would be occasioned by the continued maintenance of the State

(e) There was no finding that the interstate rate prescribed would increase the net income of the defendant carrier in any particular sum or in any sum whatsoever and no evidence before the Interstate Com-

rate was approximately Six Million Dollars.

merce Commission upon which any such finding colud be made, and no investigation of any kind with respect to it.

(f) In order to have made findings (d) and (e) above the Interstate Commerce Commission must have had before it in that proceeding substantial evidence (1) with respect to the value of the property of all the carriers in the group, and (2) the gross and net income both by group and within the State.

(f) No evidence whatsoever with respect to the value of railroad property by group or otherwise. The only evidence here with respect to income at all was the gross income for one month from log and certain other low grade traffic over the Atlantic Coast Line System (R. 287), and an exhibit introduced by the complainant Georgia Public Service Commission showing in brief the gross and net operating revenue of the Atlantic Coast Line system for specified years (R. 396), and that was introduced by the complainant for the express purpose of showing that there was no "financial necessity for increased rates" (R. 704).

(g) The exercise of the *new power* conferred by Section 13 (4) of the Act was held lawful because of the findings made under Section 15a of the Act in the performance of the duty imposed by Section 15a.

(g) Here there are no findings under Section 15a and no evidence upon which it could be based, no basis laid upon which such findings could be predicated and indeed it nowhere appears that Section 15a was involved, directly or remotely.

(h) There was the customary "saving clause" so frequently held by this Court to be so important in construing orders of the Interstate Commerce Commission which might otherwise be bad.	(h) There is here no "saving clause" but the carrier is required to put in force and maintain "within and throughout the State of Florida without exception" the interstate rate prescribed by the Commission from the small area in North Florida.

The foregoing comparison of the fundamentals of the Wisconsin case and those of the case at bar demonstrate how wholly different are the two.

We submit that every fundamental shown above to be present in the Wisconsin case and absent in this case was material to the decision in the Wisconsin case made as it was under the "dovetail relation" of Section 13 (4) and Section 15 (a) of the Interstate Commerce Act.

The decision in the Wisconsin case is no authority for the decision of the court below. Indeed, the careful and painstaking statement of this Court of the substantive and procedural elements and findings of the Commission present there (as shown above) and so patently absent in this case, warrant the inference that the decision in the Wisconsin case would have been different had those things missing here been missing there.

We rely upon the Wisconsin case because of the inference drawn as to the inappropriateness of the proceeding, the insufficiency of parties, the want of fundamental findings, evidence and investigation shown above to be absent in this case.

We also rely upon it because of its statement of the law with respect to the exercise of the State and Federal powers within their respective domains. Having sustained the order of the Interstate Commerce Commission there involved the Court said, 257 U.S., text 590, 591:

> "It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of main-

taining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination (591) against, and obstruction to, interstate commerce, *and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce.*" (italics ours)

As has been shown, the level of the interstate rate in the proceeding at bar was fixed only for the small area in north Florida. No "general level" of interstate rates was or has been fixed (a) either elsewhere in Florida other than in "north Florida", or (b) on any carrier doing business in Florida other than the Atlantic Coast Line Railroad.

No *discretion*, appropriate or otherwise, has been left to the State Government to deal with intrastate rates in any particular, for the intrastate order prescribed the rates "within and throughout the State of Florida without exception".

We submit that under these circumstances the order in question is in direct conflict with the principles expressly laid down in the Wisconsin case as well as in conflict with the principles to be inferred from it.

We rely upon the principles of constitutional and governmental law laid down in the Wisconsin case for a reversal of the case at bar.

CONCLUSION.

More is involved here than the wrong done to the sovereign rights of the State of Florida in this proceeding by the Interstate Commerce Commission in depriving that State of every vestige of power with respect to rates on logs within and throughout the State of Florida "without exception".

The great principle here involved is whether the Interstate Commerce Commission shall exercise direct and unified control over all the intrastate rates and concerns of the carriers to the entire exclusion of the state authority "without exception".

More than that is here involved, for there is here involved the question of whether that direct and unified control may be exercised by the Commission within a field where the Federal power over interstate rates has not been exercised. More than that is here involved; there is involved here the question of whether the Commission may exercise that control under the circumstances above set forth in a backhanded way in a proceeding involving the intrastate rate only incidentally and only in its relation to the interstate rate, and in a proceeding where it affirmatively appears that the state rate was voluntarily imposed and maintained by the carrier and no application was ever made to the state authority to modify or alter that state rate.

We submit that under the Federal Constitution, the laws of Congress, and the decisions of this Court, the intrastate order must go down.

Respectfully submitted,

FRED H. DAVIS,

Attorney General of Florida.

APPENDIX.

STATUTES RELIED UPON.

The Interstate Commerce Act, (41 Stat. L., 474):

Section 1:

(1) That the provisions of this Act shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

(c) The transmission of intelligence by wire or wireless;—

from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation or transmission takes place within the United States.

(2) The provisions of this Act shall also apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid;

(b) To the transmission of intelligence by wire or wireless wholly within one State and not transmitted to or from a foreign country from or to any place in the United States, as aforesaid; or

(c) To the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions of this Act except for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling or other charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

(5):

"All charges made for any service rendered or to be rendered in the transportation of * * * property * * * shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

Section 2:

That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substan-

tially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful.

Section 3 (1):

"That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Section 13 (1):

"That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint,

it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper."

Section 13 (2):

"* * * The Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money."

(3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by

it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the co-operation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and the interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary nothwithstanding.

Section 15 (1):

"That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge

whatsoever demanded, charged or collected, by any common carrier or carriers subject to this Act for the transportation of * * * property * * * as defined in the first section of this Act, * * * is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged * * * and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect, any rate, fare or charge, for such transportation * * * other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be * * *."

Section 15a (2):

"In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management, and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. Provided, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to pre-

scribe different rates for different sections of the country."

Section 15a (3):

"The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: *Provided,* That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account."

Section 15a (4):

"For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a

of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value."

Section 15a (5):

"Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States."

Section 15a (6):

"If, under the provisions of this section, any carrier, receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. For the purposes of this paragraph the value of the railway property

and the net railway operating income of a group of carriers. which the Commission finds are under common control and management and are operated as a single system, shall be computed for the system as a whole, irrespective of the separate ownership and accounting returns of the various parts of such system. In the case of any carrier which has accepted the provisions of section 209 of this amendatory Act the provisions of this paragraph shall not be applicable to the income for any period prior to September 1, 1920. The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4)."

The District Court Jurisdiction Act (C. 32, 38 Stat. L., 219):

"The Commerce Court, created and established by the Act entitled 'An Act to create a Commerce Court and to amend the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes,' approved June eighteenth, nineteen hundred and ten, is abolished from and after December thirty-first, nineteen hundred and thirteen, and the jurisdiction vested in said Commerce Court by said Act is transferred to and vested in the several district courts of the United States, and all Acts or parts of Acts in so far as they relate to the establishment of the Commerce Court are repealed. Nothing herein contained shall be deemed to affect the tenure of any of the judges now acting as circuit judges by appointment * * *.

The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not

relate to transportation, or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the Commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportaton relates to a through shipment, the term 'destination' shall be construed as meaning final destination of such shipment.

The procedure in the district courts in respect to cases of which jurisdiction is conferred upon them by this Act shall be the same as that heretofore prevailing in the Commerce Court. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States; and the right of appeal from the district courts in such cases shall be the same as the right of appeal heretofore prevailing under existing law from the Commerce Court. No interlocutory injunction suspending or restraining the enforcement, operation or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney

General of the United States, and to such other persons as may be defendants in the suit; *Provided*, That in cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges, concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said Commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. A final judgment or decree of the district court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be

taken in like manner as appeals are taken under existing law in equity cases. And in such case the notice required shall be served upon the defendants in the case and upon the attorney general of the state. All cases pending in the Commerce Court at the date of the passage of this Act shall be deemed pending in and be transferred forthwith to said district courts except cases which may previously have been submitted to that court for final decree and the later to be transferred to the district courts if not decided by the Commerce Court before December first, nineteen hundred and thirteen. * * *."

The Commerce Court Act (C. 309, 36 Stat. L., 539):

"Sec. 1. That a court of the United States is hereby created which shall be known as the Commerce Court and shall have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:

First. All cases for the enforcement, otherwise then by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-

seven, as amended, are authorized to be maintained in a circuit court of the United States.

Nothing contained in this Act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the Commerce Court.

The jurisdiction of the Commerce Court over cases of the foregoing classes shall be exclusive; but this Act shall not affect the jurisdiction now possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes."

"Sec. 211. That all cases and proceedings in the Commerce Court which but for this Act would be brought by or against the Interstate Commerce Commission shall be brought by or against the United States, and the United States may intervene in any case or proceeding in the Commerce Court whenever, though it has not been made a party, public interests are involved."

"Sec. 212. That the Attorney General shall have charge and control of the interests of the Government in all cases and proceedings in the Commerce Court, and in the Supreme Court of the United States upon appeal from the Commerce Court. If in his opinion the public interest requires it, he may retain and employ in the name of the United States, within the appropriations from time to time made by the Congress for such purposes, such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and the Attorney General shall stipulate with such special attorneys and counsel the amount of their compensation, which shall not be in excess of the sums appropriated therefor by Congress for such purposes, and shall have supervision of their action: *Provided*, that the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an

order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice and speed the determination of such suits: *Provided, further,* That communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by anyone under the provisions of this Act, or the Acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof, and the Attorney General shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or nonaction of the Attorney General therein.

"Sec. 213. Complainants before the Interstate Commerce Commission interested in a case shall have the right to appear and be made parties to the case and be represented before the courts by counsel and under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States."

Act of February 13, 1925 (C. 229, 43 Stat. L. 936).

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That sections 128, 129, 237, 238, 239, and 240 of the Judicial Code as now existing be, and they are

severally, amended and re-enacted to read as follows:

* * * * *

"Sec. 238. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:

* * * * * *

(4) So much of 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913, and for other purposes,' approved October 22, 1913, as relates to the review of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money."

Act of January 31, 1928 (C. 14, 45 Stat. L. 54).

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,* That the writ of error in cases civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.

"Sec. 2. That in all cases where an appeal may be taken as of right it shall be taken by serving upon the adverse party or his attorney of record, and by filing in the office of the clerk with whom the order appealed from is entered, a written notice to the effect that the appellant appeals from the judgment or order or from a specified part thereof. No petition of appeal or allowance of an appeal shall be required; *Provided, however,* That the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such courts."

Act of April 26, 1928 (C. 440, 45 Stat. L. 466).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of an Act entitled "An Act in reference to writs of error," approved January 31, 1928, Public, Numbered 10, Seventieth Congress, be, and it is hereby, amended to read as follows:

"Sec. 2. The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

STATE OF FLORIDA, AND A. S. WELLS, E. S. MATTHEWS AND MAMIE G. EATON, as and constituting FLORIDA RAILROAD COMMISSION, *Appellants,*
versus
UNITED STATES OF AMERICA INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees.*
No. 16.

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY, *Appellants,*
versus
UNITED STATES OF AMERICA INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees.*
No. 17.

Appeals from the District Court of the United States from the Northern District of Georgia, Atlanta Division.

REPLY OF THE APPELLANTS TO THE "MEMORANDUM ON DISCRIMINATION" FILED BY THE APPELLEE, ATLANTIC COAST LINE RAILROAD COMPANY, AT THE ARGUMENT OF THIS CAUSE.

FRED H. DAVIS,
Attorney General of the State of Florida,
Of Counsel for Appellants in No. 16.
HENRY P. ADAIR,
CHARLES E. COTTERILL,
AUGUST G. GUTHEIM,
H. PLANT OSBORNE,
Solicitors for Appellants in No. 17.

November 5, 1930.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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The Court allowed the appellants five days within which to file a reply to the "Memorandum on Dis-

crimination'' filed by the appellee, Atlantic Coast Line Railroad Company.

I.

Many of the cases and much of the discussion in the appellee's Memorandum relate solely to discrimination against persons and localities.

The fact is that the gravamen of the whole proceeding before the Interstate Commerce Commission in the case at bar related to discriminations against persons and localities. Such also was the gravamen of the Commission's report itself. Such also was the gravamen of the District Court's first decision and opinion in this cause. That this is true is clear from the first opinion of the District Court (R. 44) which, by construction, limited the scope of the intrastate order (as originally formulated) to border points of origin in North Florida.*

But it must also be borne in mind that the District Court *upon the rehearing,* when it came to consider discriminations against persons and localities, *i. e.,* against "particular interstate commerce in logs,'' found that the record in the case permitted no such statewide order as the Commission made. Thus, the District Court, *in its second opinion,* held (what it held in its first opinion) that (R. 167):

---

*As to the position of the Georgia Public Service Commission of record in the proceeding before the Interstate Commerce Commission, respecting the issues there, see Brief of the State of Florida, pages 4, 5, 23; Brief of Brooks-Scanlon Corporation, pages 8, 9, 26, 27; Brief of Wilson Lumber Company, page 26.

The scope of the issue was not broadened by (a) any intervention, by (b) any order of the Interstate Commerce Commission (under Section 15-1 or otherwise), or by (c) acquiescence, nor did the appellants at any time recognize the jurisdiction or power of the Interstate Commerce Commission to affect the intrastate rate under its power respecting *revenue* discriminations. Brief of the State of Florida, pp. 24, 29, 30; Brief of Brooks-Scanlon, et al., 58 to 61, incl.

> "The evidence does not show any actual or potential interstate commerce from South Florida" (meaning by South Florida the three-fourths or more of the carrier's lines which lie South of Gainesville), "in such logs as are involved in this rate. Because of their cheapness and of the geography of the State the inherent probabilities are against it. No such case is, therefore, shown by the evidence as to justify a statewide order altering the intrastate rate because of undue prejudice to shippers and localities, or because of undue discrimination against *the particular interstate commerce in such logs.*" (Italics ours.)

In so holding the District Court followed the plain terms of the *Illinois Passenger Fares case,* 245 U. S. 493, the *Wisconsin Passenger Fares Case,* 257 U. S. 563, and its companion case, the *New York case,* 257 U. S. 591.

The Court below having found on rehearing that the record would not support the statewide order based upon discriminations against persons, localities, and *the particular interstate commerce in logs,* proceeded then to examine further to determine whether upon any other theory the statewide order might be sustained. The District Court then said (R. 168):

> "There is, however, another discrimination against general interstate commerce when one state rate or the system of state rates is so low as to throw an undue burden on the revenues arising from interstate commerce in order to sustain the carrier engaged in both kinds of commerce."

The impropriety and unlawfulness of the order sustained upon the so-called revenue discrimination

has been fully discussed in our briefs upon the aspects of the territorial scope of the investigation, the scope of the proceeding, the want of a general level of log rates established by the Interstate Commerce Commission, the insufficiency of the evidence, and other substantive and procedural matters, and so needs no further discussion here. And numerous authorities have been cited by us to sufficiently illustrate to the Court the principles of law upon which we rely. We shall therefore refer to no other authorities save a few which are mentioned in the Memorandum of the Appellee.

II.

THE DAYTON-GOOSE CREEK CASE, 263 U. S. 456 (Page 7 of Appellee's Memorandum).

In the *Dayton-Goose Creek case,* the Court sustained the constitutionality of the recapture clause and construed Section 15-A of the Interstate Commerce Act as amended. In discussing Paragraph 17 of Section 15-A (which declares that no shipper shall be entitled to recover excessive or discriminatory rates upon the sole ground that any particular rate may reflect a portion of the excess income to be paid by the carrier to the Commission under the provisions of Section 15-A), this Court said (Text 481):

> "This last clause only prevents the shipper from objecting to a particular rate otherwise reasonable, on the ground that the net return from the whole body of rates is in excess of a fair percentage of profit,—a circumstance that was never relevant in such an inquiry, as hereafter shown."

Among other things it was asserted in the *Dayton-Goose Creek case* that the surplus earnings of the carrier, if not the property of the carrier, were the property of the shipper. On this aspect the Court said in part (text 484):

> "It is then objected that the government has no right to retain one half of the excess, since, if it does not belong to the carrier, it belongs to the shippers, and should be returned to them. If it were valid, it is an objection which the carrier cannot be heard to make. It would be soon enough to consider such a claim when made by the shipper. But it is not valid. The rates are reasonable from the standpoint of the shipper, as we have shown, though their net product furnishes more than a fair return for the carrier. The excess caused by the discrepancy between the standard of reasonableness for the shipper and that for the carrier, due to the necessity of maintaining uniform rates to be charged the shippers, may properly be appropriated by the government for public uses because the appropriation takes away nothing which equitably belongs either to the shipper or to the carrier. Yet it is made up of payments for services to the public in transportation, and so it is properly to be devoted to creating a fund for helping the weaker roads more effectively to discharge their public duties."

As we take it, the necessary holding of the *Dayton-Goose Creek case* was that the surplus revenues, if any, of the carrier, were as such no concern of the shipper.

The proceedings before the Interstate Commerce Commission were adversary proceedings and were instituted against the carrier by the Georgia Public

Service Commission for the benefit of Georgia log shippers, and the report of the Interstate Commerce Commission recited this to be the fact (R. 18; R. 791). Therefore, the standing of the Georgia Commission in those proceedings and in the subsequent court proceedings is that of a Georgia shipper.

If a shipper has no right to or concern with the surplus earnings of a carrier, as such, upon the ground that the rate paid by him is contributing to that excess, then surely a Georgia shipper has no right or interest to make or maintain a revenue statewide attack upon the intrastate rate of another state upon the theory that the state rate imposes a revenue burden upon the carrier. For indeed, the shipper has no direct interest at all in the net revenues as such.

Thus, from the standpoint of the shipper there is no discrimination. This is forcibly brought to mind when we consider that the revenue section of the Act, to-wit, Section 15-A, was held by this Court in the *Wisconsin Passenger Fares case,* 257 U. S. 653, to confer no powers on the Commission, but to impose a duty upon it. And by interpretation the Court has so construed Section 13 as amended as to provide the machinery by which the duty imposed by Section 15-A may be performed by the Interstate Commerce Commission.*

---

*Substantive and procedural action similar to that sustained in the *Wisconsin case* was taken by the Interstate Commerce Commission in *State of Alabama v. United States Interstate Com. Comm.*, 42 F. (2d) 469, in investigating, adjudging and removing a revenue discrimination arising out of Alabama intrastate fertilizer rates.

III.

THE WISCONSIN PASSENGER FARES CASE, 257 U. S. 653.

The *Wisconsin case* is cited by our adversaries' Memorandum to support their theory of unified control which is in effect the theme of its Memorandum.

In the brief of the State, at pages 35 to 39 inclusive, a careful analysis of the *Wisconsin case* and of the case at bar are placed between two parallel columns, and how wholly different is the *Wisconsin case* and its companion case, the *New York case,* from the case at bar, is shown by that parallel comparison.

The *Wisconsin case* carefully negatives this notion of unified control where this Court in referring to the conclusion reached in that case, says (text 590):

> "It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with the intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce."

This Bill of Rights for the states has been included in most of the important cases involving the Transportation Act of 1920, since the decision in the *Wisconsin case,* including the latest decision of this Court upon that subject, to-wit, the *North Dakota case,* decided at the end of last term.

IV.

The appellee in its Memorandum attempted to demonstrate that if all the timber in the Hinds, Otter Creek, Momosassa, Withlacooche River, Perry and Carbur sections of Florida were to be shipped at the newly prescribed intrastate rate, instead of the former Florida intrastate rate, the gross revenue gain to the carrier would be approximately $6,000,000.00. This is a calculation based upon the estimated standing timber, the probable eventual total cut, the estimated weight per foot, and the resulting total pounds, which it is assumed would be transported at the rates prescribed by the Interstate Commerce Commission. It is a calculation compelled by the absence from the record of precise figures showing the relation of log revenues carried on the Cummer Scale of rates to the system or the Florida intrastate revenues of the Atlantic Coast Line,—all of which precise figures are peculiarly within the knowledge and possession of that carrier. This estimate does not indicate whether it contemplates that such shipments and such revenue gains will be spread over five years, ten years, twenty years, or more or less.

Furthermore, this estimate entirely ignores the testimony of the owners of the timber in those sections, many of whom testified (as the record shows) that if any substantial increase in the then existing intrastate rate was prescribed they would be compelled to abandon their existing mills and villages at tidewater and construct their mills in the timber itself. The report of the Commission (R. 24, 797) makes reference to the testimony produced on this subject by one of the largest of these lumber companies. This testimony of the mill owners was not contradicted in

any particular and if true, the gross revenue result would be very different from that prophesied by the appellee's Memorandum. Indeed, the State's bill (R. 14) shows that two of such lumber companies (not parties here) owning a large part of the very timber referred to in the appellee's Memorandum, due to the fixation of the new intrastate rate, have abandoned their tidewater investments and operations and the larger of them has built its mill in the timber,—thus obviating any necessity of log transportation at the rates prescribed by the Interstate Commerce Commission.

In the face of that testimony and those allegations, no one has the right to assume that the movement of many of the mills from tidewater to the timber will not be and has not been accomplished and thus the gross revenue reduced instead of increased. Rather, as we think the Court will recognize, this is a case where, in the language of Mr. Chief Justice Taft in the *Wisconsin case* (Text 591), "it may well turn out that the effect of a general order in increasing all rates * * * will * * * reduce income instead of increasing it by discouraging patronage."

V.

Again we submit that the order of the Interstate Commerce Commission entered in this proceeding prescribing a Florida intrastate rate for application within and throughout the entire State of Florida

without exception is unlawful, and should have been enjoined by the Court below.

Respectfully submitted,

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November 5, 1930.

FILE COPY

FILED
DEC 24
CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. [redacted] 17

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY, *Appellants*,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees*.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION.

THE JURISDICTION OF THE COURT.

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Solicitors for Appellants.

December 20, 1929.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 494.

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY, *Appellants*,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees*.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION.

THE JURISDICTION OF THE COURT.

(A) The Statutes.

Appellants rely upon Section 238 of the Judicial Code as amended by the Act of Congress of February 13, 1925, (Chapter 229, 43 Stat. 938); also the Urgent Deficiency Act of Congress of October 22, 1913, (Chapter 32, 38 Stat. 219, 220).

(B) The Decree.

The decree appealed from was dated April 17, 1929, and entered April 22, 1929 (Tr. 1329). Appellants' notice of appeal was dated June 6, 1929, and was presented on that day (Tr. 1331); the Order allowing said appeal was dated June 6, 1929, and was entered June 19, 1929; and proof of service upon all adverse parties in interest, of notices of said appeal, were filed June 18 and 20, 1929 (Tr. 234, 1354, 1356).

(C) The Nature of the Case and of the Rulings Below.

This suit was instituted (Tr. 1185) by the Appellants (Complainants below) to enjoin, set aside, and annul so much of an order of the Interstate Commerce Commission dated and filed August 2, 1928 (Tr. 1216), and subsequently amended and clarified in certain particulars (Tr. 1323), in a certain proceeding had before said Interstate Commerce Commission entitled No. 18364, *Georgia Public Service Commission,* Complainant, vs. *Atlantic Coast Line Railroad Company,* Defendant, reported in 146 I. C. C. 717 (Tr. 1205), as required the said Railroad Company to establish and put in force in intrastate commerce within and throughout the entire State of Florida, without exception, certain rates on logs which were in the same Order fixed as reasonable for transportation from points in northern Florida to points in Georgia in interstate commerce.

Circuit Judge Walker and District Judges Sibley and Dawkins comprised the specially-constituted District Court and concurred in a unanimous opinion filed January 17, 1929 (*State of Florida* v. *United States,* 30 Fed. (2d) 116, (Tr. 1242). Afterwards said Trial Court so constituted, by its Order (Tr. 1297) granted a re-

hearing and allowed the Appellants to file a Supplemental Bill (Tr. 1270). Thereafter, upon said rehearing, the said Judges comprising said Trial Court concurred in a unanimous opinion (Id. 31 Fed. (2d) 580 (Tr. 1325), and on April 22, 1929, entered the final decree dated April 17, 1929 (Tr. 1329), by which the said Trial Court, for the reasons stated in said last described opinion, denied the relief sought and dismissed the Bill and the Supplemental Bill.

(D) Cases Sustaining the Jurisdiction.

Baltimore & O. R. Co. v. United States, 277 U. S. 291.
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New York v. United States, 257 U. S. 591.

Respectfully submitted,

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Solicitors for Appellants.

December 20, 1929.

Service of copy of the foregoing statement as to Jurisdiction on Appeal is hereby acknowledged this .....day of December, 1929.

.....
For United States of America, Appellee.

.....
Solicitor for Interstate Commerce Commission, Appellee.

.....
Solicitor for Atlantic Coast Line Railroad Company, Appellee.

.....
Attorney General, State of Georgia, for Georgia Public Service Commission, Appellee.

FILE COPY

FILED
APR 10
CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

NO. 17

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY, *Appellants,*

VS.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FROM THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION.

Brief for Appellants.

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April 9, 1930.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

NO. 494.

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY, *Appellants,*

VS.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FROM THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION.

Brief for Appellants.

REFERENCE TO THE OFFICIAL REPORTS OF THE OPINIONS OF THE DISTRICT COURT AND OF THE INTERSTATE COMMERCE COMMISSION.

The opinion of the District Court upon rehearing is dated March 22, 1929, and cited as *State of Florida v.*

United States, 31 F. (2d) 580. The opinion of that Court upon the original hearing is dated January 17, 1929, and cited as *State of Florida v. United States,* 30 F. (2d) 116. The report of the Interstate Commerce Commission is dated August 2, 1928, and is cited as *Georgia P. S. Commission v . A. C. L. R. R. Co.,* 146 I. C. C. 717.

STATEMENT AS TO JURISDICTION.

On December 20, 1929, appellants filed and served upon all opposing counsel their statement on the Jurisdiction of the Court, conformably to paragraph 1 of rule 12 of the Revised Rules of Practice of this Court. On January 27, 1930, the Court announced its finding that probable jurisdiction had been shown.

STATEMENT OF THE CASE

This is an appeal from a decree of the United States District Court for the Northern District of Georgia, Atlanta Division (R. 951), which, sitting as a specially constituted three-judge court in accordance with the provisions of the District Court Jurisdiction Act, 38 Stat. L. 219, denied the relief sought by appellants (as complainants in equity below), refused to enjoin an order of the Interstate Commerce Commission contended by appellants to be unlawful, and dismissed the bill and supplemental bill of complaint.

There was heard by the Court below jointly with Appellants' bills, two other bills and supplemental bills, also contending that the same order of the Interstate Commerce Commission was unlawful. The opinions of the District Court on original hearing (R. 44) and upon rehearing (R. 167) covered and disposed of

all three complaints in like manner, and similar individual decrees were entered by the District Court in all three proceedings (R. 170, 951, 1013). The complainants below in the two other cases are now before this Court with their individual appeals, being No. 493, *State of Florida;* and *A. S. Wells, E. S. Mathews, et al., Etc., Appellants, v. United States, Interstate Commerce Commission, et al., Appellees;* and No. 495 *Wilson Lumber Company of Florida, Appellant, v. United States of America, Interstate Commerce Commission, et al., Appellees.*

As a result of these final decrees of the District Court there was permitted to become effective an order of the Interstate Commerce Commission dated August 2, 1928 (R. 800) and subsequently amended in certain particulars (R. 165-to-167), which directed and required the Atlantic Coast Line Railroad Company to establish and maintain in effect certain rates for the transportation of logs over its lines of railroad "within and throughout the entire state of Florida, without exception."

The opinions of the District Court distinguish between what it recognizes as (1) undue prejudice to shippers or localities, or undue discrimination against *particular* interstate commerce (meaning apparently violations of Section 3 of the Interstate Commerce Act); and (2) discrimination against *general* interstate commerce, as when one state rate or the system of state rates is so low as to throw an undue burden on the revenues arising from interstate commerce (meaning apparently violations of Section 13). See 30 F. (2d) 116, at 120-121 (R. 46-47), and 31 F. (2d) 580, at 581 (R. 168). The view of the District Court seems to be that the order of the Commission cannot be justified on

the ground that it is necessary in order to remove a discrimination against *particular* interstate commerce, but can be justified on the ground that it is necessary to remove a discrimination against *general* interstate commerce.

The report of the Interstate Commerce Commission (R. 792), shows that the relief sought by the complainant there, with respect to interstate rates, was limited to a small section in north Florida, and the relief granted by the Commission with respect to interstate rates was likewise so limited. But the action of the Interstate Commerce Commission with respect to intrastate Florida rates was applicable "within and throughout the entire state of Florida, without exception."

The lawfulness of this order of the Interstate Commerce Commission, prescribing the future intrastate rates on logs "within and throughout the entire state of Florida, without exception," is the sole question raised before this Court. No action of the Interstate Commerce Commission with respect to any interstate rates, is here in issue.

The Proceedings Before the Interstate Commerce Commission.

The Georgia Public Service Commission, the regulatory Commission established by the State Legislature of Georgia, filed the original complaint with the Interstate Commerce Commission, naming the Atlantic Coast Line Railroad Company as defendant. The object of the complaint was stated in Paragraph 3 thereof to be as follows:

> "3. That the object of the complaint is to secure reasonable rates on logs from all points on the

> Atlantic Coast Line Railroad, as hereinafter shown within the state of Florida to all destinations on the said Atlantic Coast Line Railroad in the State of Georgia, and to have removed any unjust discrimination or undue prejudice found to exist as provided in the Interstate Commerce Act." (R. 193.)

The complaint alleged the existence of competition between mills and other consumers located within the State of Georgia and mills and purchasers located within the State of Florida "in the purchase and transportation of logs from Florida points." (Paragraph 4.) It set out the established mileage rates on logs, per carload, intrastate within Florida (Paragraph 5), and interstate from Florida to Georgia (Paragraph 6) for hauls up to 170 miles. It made comparison of certain specific applications of such Florida intrastate and such Florida to Georgia interstate rates for hauls up to 170 miles (Paragraph 7). It alleged that the interstate rates greatly exceeded the intrastate rates for like distances upon traffic moving under substantially similar transportation conditions (Paragraph 8).

Upon such allegations the complaint charged unlawfulness in the rates, thus:—

(1) That the interstate rates on logs from shipping points in Florida to destinations in Georgia were unjust and unreasonable, in violation of Section 1 of the Interstate Commerce Act; (2) that such rates unjustly and unlawfully discriminated against the Georgia log shippers, in violation of Section 2; that (paragraphs 9 and 10) such rate adjustment was unduly prejudicial and disadvantageous to Georgia interstate shippers and gave undue preference and advantage to intrastate Florida log shippers, in violation of Section 3. It was further charged in Paragraph 11:—

> "11. That the intrastate Florida rates charged and received by defendant carrier for the transportation of logs from Florida producing points to destinations in Florida give undue and unreasonable preference and advantage to intrastate shippers in Florida; and are unduly prejudicial and disadvantageous to the interstate shipper in Georgia, and causes undue and unreasonable and unjust discrimination against interstate commerce in the violation of Section 13 of the Interstate Commerce Act."

The defendant carrier before the Commission, the Atlantic Coast Line Railroad Company answered with an admission that

> "Its rates applicable on logs * * * interstate * * * from Florida points to destinations in Georgia, are in excess of the intrastate rates in Florida where hauls are for distances of 170 miles and under;"

and the denial that its interstate rates are either unjust or unreasonable, and also with the denial that there was any violation of the Interstate Commerce Act. The Answer prayed for the dismissal of the complaint. (R. 199.)

A large number of interveners appeared as parties interested at the hearing before the Commission. These included railroads other than defendant Atlantic Coast Line, operating in Florida, presumably to defend the interstate rates under attack; the Florida Railroad Commission and numerous intrastate log shippers in Florida; and two Georgia lumber companies which presumably supported the complaint. (R. 399.)

At the opening of the hearing the presiding Exam-

iner made a statement of the issues in the proceeding as follows (R. 401):—

> "It is alleged that the rates on logs, in carloads, from points in Florida to destinations in Georgia are unreasonable, unjustly discriminatory, unduly preferential of Florida shippers, and the Florida intrastate traffic, and unduly prejudicial to Georgia Shippers and to interstate traffic, in violation of Sections 1, 2, 3 and 13 of the Interstate Commerce Act. The Commission is asked to prescribe reasonable rates for the future."

No corrections or changes were suggested by any party to such statement of the issues. (R. 401.)

Neither in the formal pleadings nor in the statement of the issues by the Examiner was there any suggestion as to how the "object" of the complaint of the Georgia Public Service Commission was to be accomplished,—whether by reduction of the interstate rates from Florida to Georgia to equalize the Florida intrastate rates, or by increase of the Florida intrastate rates to equalize the interstate rates, or by a general levelling of both down and up.

The Georgia Public Service Commission put on its case with one witness, who presented a series of comparisons of the interstate and state rates for hauls up to 170 miles (R. 401, *et seq.*), which evidence is commented upon by the Commission in its report at page 721 (R. 795). There was no evidence of any movement of logs interstate from Florida to Georgia; the witness admitted no extensive movement was likely because of the rates, and the Commission so found (R. 796). There was no evidence offered by this witness demonstrating similarity of circumstances and conditions surrounding the transportation of logs, interstate and

state; he had no knowledge of the subject. (R. 705-706.)

This witness for the Complainant made it clear that the object of the complaint was to extend the Florida intrastate rates scale and make it applicable to the movement of logs interstate from Florida to Georgia. He said (R. 417):—

> "I have not prepared any schedule of rates to suggest being used as a means to remove the discrimination against Georgia manufacturers, as shown in our exhibit, but do suggest and contend that the rates *now* being operated in Florida be extended into Georgia for interstate application." (Italics ours.)

Concluding his statement to the Commission on direct this witness further said (R. 417-418):—

> "While this is not a revenue case, it is possible that the Commission will give some consideration to the possible effect on the Atlantic Coast Line revenues if these discriminations are removed by requiring the Florida scale to be extended into Georgia, and if so we would like to call attention to the impossibility of any extensive movement at the present time from Florida to Georgia on the present high interstate rates, and, therefore, it follows that if the Georgia manufacturer is given the benefit of these Florida rates, the same as his Florida competitor, it will very materially increase the movement from Florida into Georgia and thus have the effect of creating new and increased revenues for the Atlantic Coast Line, rather than to decrease their revenues."

The same witness voiced the same aim of the Georgia Public Service Commission a third time on cross-examination (R. 419).

The Chairman of the Georgia Public Service Commission (Perry), acting as its counsel at this same hearing, confirmed the position of his Commission as stated by his witness, saying with respect to the proposal that the Florida intrastate rate be extended into Georgia (R. 421), "* * * that is all there is in the case, it is all that has ever been in the case, it is all we are asking for and all we hope to gain." And again, toward the close of the hearing, Chairman Perry stated that the Georgia Public Service Commission's reason for bringing the complaint was "as fully outlined in the testimony of its rate expert, Mr. E. M. Price." (R. 655.)

There also appeared five witnesses representing interveners supporting the complaint. These likewise took the position that relief should be afforded under the complaint by reducing the interstate rates from Florida to Georgia. (J. C. Jackson, R. 422; Simmons, R. 426; Giddens, R. 532; Davies, R. 544; H. A. Jackson, R. 553.) One of these five also took the position on the strength of calculations made for him by the defendant Atlantic Coast Line, that he could do business in Georgia if the Florida intrastate rate to Jacksonville were increased (Davies, R. 545).

From the foregoing it appears that the complainant filed its case, and, with those supporting it as interveners, prosecuted it before the Commission, upon the theory that relief should be afforded by the Commission by an order requiring the reduction of the interstate rates to the level of the then effective intrastate rates in Florida. And neither the complainant nor the defendant or any other party before the Interstate Commerce Commission offered any evidence designed to prove or tending to prove that the Florida intrastate

rate on logs resulted in a revenue burden upon interstate commerce. It was in no sense "a revenue case" (R. 417).

At the conclusion of the testimony on behalf of the complainant and its supporting interveners the various Florida interveners filed a written motion challenging both the power of the Commission in the premises and the sufficiency of the evidence. This was referred by the Examiner to the Commission (R. 467, side R. 211). At the conclusion of defendants' testimony the motion was renewed, with the express announcement on behalf of the Florida interveners that, "We are going to go ahead and 'put' in evidence-in-chief, without having our motion or any rights that we have previously acquired thereunder". (R. 562.) The motion again was made to Division 4, and was not denied until the Report of that Division on the merits of the case was finally made. (R. 792.)

The Report was by Division 4 of the Commission (R. 790), and resulted in very minor reductions in the interstate rates on logs, Florida to Georgia, and very material increases in the intrastate rates within the State of Florida. (R. 795, 800-801)

The pertinent part of the order of Division 4 of the Commission which accompanied its report dated August 2, 1928, is the fourth paragraph thereof. This, upon issue, read as follows (R. 800-801):—

> "*It is further ordered,* that said defendant be, and it is hereby, notified and required to cease and desist from practicing the undue preference and advantage, undue prejudice, and unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain rates for the transportation of logs, except walnut, cherry and cedar

> in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which shall be the same as those prescribed in the next preceding paragraph hereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia."

Petitions for re-argument and reconsideration by the entire Commission, were filed by the various Florida interveners (R. 818, 841, 865), and were denied (R. 870).

Between August 2, 1928, and the date when it finally became effective the said paragraph four was twice amended by the Commission, on February 5, 1929 (R. 166), and February 7, 1929 (R. 166). In final form, and as it eventually became effective, paragraph four required that the mileage scale of rates prescribed for interstate application from Florida to Georgia (R. 800-801, and 166-167) should also be made effective,

> "for the transportation of logs * * * in intrastate commerce within and throughout the entire state of Florida, without exception."

The Proceedings in the District Court.

Appellant's original bill of complaint was filed in the District Court on Nov. 24, 1928 (R. 870). At or about the same time there were two substantially similar bills filed by the State of Florida and the Wilson Lumber Company of Florida, the other Appellants now before this Court in Nos. 493 and 495, (R. 1, 960). All three bills attacked the validity of the same report and order of the Interstate Commerce Commission—that cited as *Georgia P. S. Commission vs. A. C. L. R. R. Co.*, 146 I. C. C. 717 (R. 790). The named and in-

tervening defendants before the District Court all denied the complainants' material allegations of unlawfulness in the action of the Commission (R. 887, 889, 898). The three proceedings were consolidated and heard jointly (R. 43), the issues raised being summarized by the Court below thus (R. 44):—

> "The contentions of invalidity make these main questions: (1) Is the order within the lawful powers of the Commission? (2) Is it within the issues sought to be investigated and made after full hearing of them? (3) Is it arbitrary because unsupported by sufficient evidence? (4) The State of Florida and Wilson Lumber Company, construing the order as abrogating the Coast Line's intrastate log rates throughout the state of Florida rather than within the limited territory for which new interstate rates were fixed, make the special and newly raised contention of an entire want of evidence to support so broad an order." (First Decision, page 118)

At that time the order of the Commission under attack prescribed rates for application upon the transportation of logs "in intrastate commerce within the State of Florida." (R. 800-801.) The case really went off on the Court's construction of this language, as shown in subdivisions (7) and (8) of the first opinion below. The Court said (R. 50):—

> "From a cursory search of the record it appears to be true that the evidence, though often broadly phrased, really related to the logs in North Florida, a territory described by the Commission in its order establishing new intrastate (*sic*,—official report of decision reads "interstate") rates as north of and including Jacksonville, Gainesville,

Burnett's Lake and High Springs." No interest, apparently, was taken by any one in the territory more remote from the Georgia line, evidently because the class of logs involved, could under no circumstances, be profitably moved so great a distance. Although the complaint covered the whole of Florida, the real contention, and the Commission's own action upon the interstate rates, were limited to that northern territory, and the evidence related only to it." (page 50) * * *

"The language of the order passed touching the intrastate rates can be construed as fixing rates for the whole state." (page 50) * * *

"The respondents in answering the bill of the state of Florida seem to deny this construction. The answers to the bill of the Wilson Lumber Company vary. Those of the Interstate Commerce Commission and Georgia Public Service Commission do not commit themselves to any construction, but leave the order to speak for itself. We think it can also be construed as limited to points of origin on the Coast Line Railroad north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs." (page 50.)

"The Commission confined its order on interstate rates expressly to these origins, and dealt with the intrastate rates only by reference to the order fixing the interstate rates, declaring that the rates 'in intrastate commerce within the state of Florida shall be the same as those prescribed in the next preceding paragraph hereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia:" (page 51). * * *

"Since the first construction would probably nullify the order, we think we should follow the established rules in construing contracts and statutes, holding to the latter construction which would uphold it." (page 51)

And, pursuant to these conclusions, the Court below construed the order as not state-wide, found no sufficient cause to enjoin and set it aside, and entered its decree dismissing all the three bills of complaint (R. 51, 52, 901, 984).

The order of the Commission so construed by the District Court was then scheduled to become effective February 8, 1929. The carrier respondent thereto, the Atlantic Coast Line, proceeded to comply therewith in disregard of the interpretation of the order by the District Court, by increasing the rates on logs statewide throughout Florida. This gave rise to further court proceedings, in both the state and federal courts in Florida, and as set forth in the supplemental bills of complaint subsequently filed in the Court below (R. 61, 912, 987). While these further proceedings were under way the Interstate Commerce Commission amended its order theretofore construed by the District Court as above set forth, to make the requirement as to intrastate rates on logs over the Atlantic Coast Line apply "within and throughout the entire state of Florida, without exception." (R. 166.) This of course nullified the interpretation theretofore made by the District Court of the order in its original form.

Promptly after this last amendment of its order by the Commission the Appellants, as complainants below, filed in the District Court their petition for rehearing of the entire matter, and their Supplemental Bill of Complaint (R. 902, 912). The two other original complainants below filed similar petitions and Supplemental Bills in their individual cases (R. 52 and 61, 985 and 987). A rehearing was granted, and the Atlantic Coast Line, the carrier defendant before the Commission, then for the first time appeared in the

District Court, and was allowed to intervene in support of the Commission's order (R. 934, 935). The Court's reconsideration of the matter was had in the view that (R. 167):—

> "The ambiguity which we formerly found in the order of the Commission is now removed, and the intent made clear that the intrastate log rate in question is to be changed over the entire Coast Line system in Florida." * * *
>
> "We have therefore to examine the record more closely, and see if a state-wide change of the rate is sustainable." (p. 167)

In the final opinion below the District Court first concluded that a state-wide order altering the intrastate rate could not, on the evidence, be justified "because of undue prejudice to shippers and localities, or because of undue discrimination against the *particular* interstate commerce in such logs." (R. 168) But it then proceeded to recognize (R. 168) that:—

> "There is, however, another discrimination against *general* interstate commerce, when one state rate or the system of state rates is so low as to throw an undue burden on the revenues arising from interstate commerce, in order to sustain the carrier engaged in both kinds of commerce,"

and to hold, further, (R. 168) that:—

> "The natural remedy for such a condition is a change of the state rate or rates to the full extent of their application."

The Court then concluded:—

> "The rate (*i. e.*, the intrastate rate) was therefore in issue for all purposes of section 13, al-

though there was no express prayer for its enhancement, and no express allegation that it was unprofitable to the carrier." (R. 168)

"We cannot say the order is without evidence to sustain it, on the ground that the former state rate was an undue discrimination against general interstate commerce over the Coast Line Railroads." (R. 169.)

"We find no reason to doubt that, however disappointing the result, the hearing was full, within the meaning of the statute, and the power of the Interstate Commerce Commission not abused." (R. 170.)

Accordingly decrees were entered denying the relief sought and dismissing the bills and the supplemental bills of complaint in all three cases. (R. 170, 951, 1013.)

It is from these decrees that this appeal and the two associated appeals are prosecuted.

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED.

These Appellants filed in the District Court twenty-seven assignments of error, all of which are intended to be urged. They are that the District Court erred as follows (R. 953):—

I. In denying the relief prayed, and in dismissing the bill and supplemental bill.

II. In failing and refusing to find that the report and order of the Interstate Commerce Commission of August 2, 1928, as amended February 7, 1929, constitute an unlawful exercise of power by said Commission and are without warrant or authority of or under the Constitution of the United States.

III. In failing and refusing to find that there is not and cannot be any interstate commerce in logs over the Atlantic Coast Line Railroad from Florida origins to Georgia destinations on its line.

IV. In failing and refusing to find that the compulsory increase of the Florida intrastate rates on logs of the Atlantic Coast Line Railroad Company could not and did not result in the creation of interstate commerce in logs over the Atlantic Coast Line Railroad Company from Florida to Georgia.

V. In failing and refusing to find that there was no substantial evidence of record before the Interstate Commerce Commission showing or tending to show that substantially similar circumstances and conditions surrounded the transportation of logs by railroad on the one hand over the Atlantic Coast Line Railroad Company between points in Florida and on the other hand from origins on its line in Florida to destinations in Georgia.

VI. In failing and refusing to find that there was no issue or controversy under the issues as restricted and defined at the hearing before the Interstate Commerce Commission as to the question that the lower level of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company caused or would cause unjust discrimination against interstate commerce as such in violation of Section 13 of the interstate commerce act.

VII. In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are unlawful because said Commission has thereby sought to embrace within the scope thereof all rates of the Atlantic Coast Line Railroad Company on logs between any stations on its line wholly within the State of Florida

for any length of haul, not exceeding 170 miles, and in any portion of such State, although there was no case or controversy submitted to that tribunal or pending before it involving in any way freight rates of the Atlantic Coast Line Railroad Company on logs within Florida, except for hauls of 170 miles and less over such railroad wholly within the so-called Northern portion of the State of Florida.

VIII. In failing and refusing to find that the said order as amended is invalid because of its territorial scope, in that said order as amended fixes the intrastate rates on logs between all points on all the lines of the Atlantic Coast Line Railroad Company in Florida, whereas the intrastate rate investigation in said proceedings before the Interterstate Commerce Commission was limited to movements of logs between points on only a portion of the lines of said Atlantic Coast Line Railroad Company located in only a small area situated in Northern Florida.

IX. In failing and refusing to find that there was no evidence whatsoever before the Interstate Commerce Commission supporting or tending to support the conclusion that the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company would subject interstate commerce to unjust discrimination in violation of Section 13 of the interstate commerce act.

X. In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because they seek to interfere with the voluntary continuance of the Florida intrastate rates on logs over its line by the Atlantic Coast Line Railroad Company without any substantial evidence showing or tending to show that

the continuance of such Florida intrastate log rates in any way violates the provisions of Sections 3 or 13 of the interstate commerce act, and without any request or petition by said Atlantic Coast Line Railroad Company, by the Georgia Public Service Commission, or by any other party to either the Interstate Commerce Commission or to the Florida Railroad Commission to increase such Florida intrastate log rates, and without any other effort whatsoever by said Atlantic Coast Line Railroad Company to increase said rate.

XI. In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because there was no substantial evidence to support the finding that such Florida intrastate log rates are less than reasonably compensatory.

XII. In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because the facts of record before the Commission do not show that there is or would be any real or substantial injury to or restriction upon interstate commerce as a consequence of the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company.

XIII. In failing and refusing to find that the report and order of the Interstate Commerce Commission constitute an unlawful invasion of the sovereign rights of the State of Florida reserved to it under the Constitution of the United States and the citizens of the State of Florida and is without any warrant or authority of or under the Constitution of the United States, and further, that said Interstate Commeree Commission was and is without jurisdiction to enter said report and order.

XIV. In failing and refusing to find that the issue as to whether the lower level of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company cause or would cause unjust discrimination against interstate commerce in violation of Section 13 when construed with Section 15a of the Interstate Commerce Act, was eliminated from the proceeding before the Commission by the parties thereto.

XV. In failing and refusing to find that the intrastate rates, investigated by the Interstate Commerce Commission, were not those contemplated by Section 13 (4) of the Interstate Commerce Act, as amended, because same were voluntarily initiated by the carrier, and therefore not "made or imposed by authority of any State", within the description of Section 13 (3) of said Act.

XVI. In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are unlawful because there were no facts of record in such proceeding before the Interstate Commerce Commission showing, or tending to show, nor did the Interstate Commerce Commission find any facts sufficient to constitute, unjust discrimination against interstate commerce in violation of the provisions of Section 13 of the Interstate Commerce Act.

XVII. In holding that the order of the Interstate Commerce Commission of August 2, 1928, as amended on February 7, 1929, was within the issues sought to be investigated by said Commission.

XVIII. In holding that said order of the Interstate Commerce Commission was made after a full hearing by said Commission.

XIX. In holding that the report and order of the Interstate Commerce Commission raising the

state rate of the Atlantic Coast Line Railroad Company over its entire system in Florida on logs is justified in order to remove discrimination against *general* interstate commerce in that said Florida intrastate log rates are so low as to throw an undue burden on the revenues arising from interstate commerce.

XX. In the holding that "there was no territorial limitation in the complaint. No such limitation was put on the inquiry by any subsequent amendment or by any order of the Commission. * * * The rate was therefore in issue for all the purposes of Section 13, although there was no express prayer for its enhancement, and no express allegation that it was unprofitable to the carrier."

XXI. In holding that "in rejecting the conclusion of slight net income asserted by the witnesses, the Commission did not rule out the basic facts shown, but was at liberty to supplement them and construe them for itself, and make its own conclusion from them."

XXII. In holding that the Interstate Commerce Commission, in reaching its conclusions respecting the Florida intrastate rates on logs, was entitled to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions, and the railroads must have in such matters."

XXIII. In holding that "on the face of things the log rate is too low, and likely to burden the carrier."

XXIV. In holding that "we cannot say that the order is without evidence to sustain it, on the ground that the former state rate was an undue

discrimination against general interstate commerce over the Coast Line Railroads."

XXV. In holding that the complainants in their reply to the exceptions of said Georgia Public Service Commission to the report of the examiner of the Interstate Commerce Commission failed to contend that the finding of said report with respect to the burdensomeness of said rate was foreign to said investigation.

XXVI. In holding that the complainants in their application for a rehearing before the entire Interstate Commerce Commission failed to contend that the burdensomeness of the Florida intrastate rate was foreign to the investigation had by said Interstate Commerce Commission.

XXVII. In failing to suspend, annul and permanently enjoin the Commission's order of August 2, 1928, as amended from time to time in order to extend the effective date thereof, and as changed in language for the purpose of clarification on February 7, 1929, insofar as said order applied to rates on the intrastate transportation of logs in Florida.

ARGUMENT.

Summary.

The order of the Interstate Commerce Commission was beyond the scope of the issues raised in the proceeding before the Commission wherein said order was entered; it was made without any substantial evidence to support it; and was made without the full hearing required as precedent to the entry of such order by the interstate commerce act.

The order of the Interstate Commerce Commission was beyond the scope of its statutory power.

The Interstate Commerce Commission, in condemning existing rates and in fixing rates for the future, is not authorized or empowered to "supplement" the facts shown of record before it, or to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions, and the railroads must have in such matters," and the District Court erred in the view that the Commission could so supplement the facts of record and could rely upon such common knowledge and skill.

The Interstate Commerce Commission was without power to regulate and fix the intrastate rates for the transportation of logs wholly within the State of Florida because said rates were voluntarily initiated and maintained in effect by the carrier and were not rates "made or imposed by authority of any state" within the description of Section 13 (3) and (4) of the interstate commerce act.

The order of the Interstate Commerce Commission constituted an act in contravention of the Constitution of the United States.

The District Court, in order to uphold the jurisdiction and order of the Interstate Commerce Commission, relied upon the Court's own conclusion upon the evidence with respect to the propriety of the rates in controversy and in so doing exercised administrative power not possessed by the Court.

The District Court should have granted the relief prayed for in the Bill and in the Supplemental Bill, and should have permanently enjoined the order of the Interstate Commerce Commission.

Statutes Relied Upon.

The relevant portions of the statutes relied upon are printed in the Appendix to this brief.

Point I.

THE ORDER OF THE INTERSTATE COMMERCE COMMISSION WAS BEYOND THE SCOPE OF THE ISSUES RAISED IN THE PROCEEDING BEFORE IT WHEREIN SAID ORDER WAS ENTERED.

(This is applicable to Assignments of Error VI., VII., VIII., X., XIV., XVII., and XX.)

The proceeding before the Interstate Commerce Commission wherein was entered the order here in question was distinctly of the "Complaint and Answer" variety authorized to be filed by Section 13 (1) of the Interstate Commerce Act, and with respect to which the Interstate Commerce Commission is empowered to grant future relief under Sections 15 (1) and 13 (4). The proceeding was most emphatically not a general investigation on the Commission's own motion with issues such as the Commission might have chosen to make them as authorized by Section 13 (2).

The Georgia Public Service Commission as complainant before the Interstate Commerce Commission directed its attack fundamentally against the interstate rates applicable to the transportation of logs from Florida origins to Georgia destinations for hauls as long as up to and including 170 miles. Those

rates, it was shown, were higher than the rates for like hauls of logs intrastate in northern Florida. It was charged that the interstate rates were unreasonably high and that the *relation* of the interstate and the lower Florida intrastate rates gave rise to unjust discrimination, to undue prejudice and preference, and to unjust discrimination against interstate commerce. The prayer of the complaint asked for just, reasonable, non-discriminatory and non-prejudicial interstate rates for the transportation of logs from Florida to Georgia and—

> "* * * that the measure of said rates be no higher than the rates concurrently in effect for the same kind of property, from producing points located within the State of Florida, moving in intrastate commerce, to destinations within the State of Florida." (R. 197.)

There was but one carrier named as defendant in this complaint,—the Atlantic Coast Line Railroad Company. This defendant, while admitting that its interstate rates on logs from Florida to Georgia exceeded the intrastate rates within Florida, for hauls up to 170 miles, denied that those interstate rates were unjust and unreasonable. Beyond that it denied any violation whatever on its part, of the interstate commerce act, and prayed for the dismissal of the complaint of the Georgia Public Service Commission. (R. 199.)

The issues presented for the Commission's determination were those joined by this complaint and answer, and no other. It is to be observed that the Georgia Public Service Commission, far from attacking the intrastate Florida rates, specifically relied upon

the same as the measure of the relief which it hoped to obtain by way of reduction in the rates from Florida to Georgia. It is further to be observed that the Atlantic Coast Line not only specifically denied any unlawfulness on its part in the maintenance of these various rates but prayed also for the dismissal of the complaint. It is quite impossible under such circumstances to deduce that the pleadings in any respect brought in issue the reasonableness of the intrastate rates within Florida. On the contrary those very rates were accepted by the complainant as proper and offered by it as the test of what the interstate rates should be for the future; they were defended by the Atlantic Coast Line which published and maintained them.

It may be said that the prayer of the complainant did not specifically ask for the prescription of interstate rates no higher than the rates *then* effective intrastate within Florida. Any doubts with respect to this point, however, were speedily removed by the representatives of the complainant upon hearing. The only witness offered by the complainant (Mr. E. M. Price, Rate Expert of the Georgia Commission), when asked if he had prepared a schedule of rates to be used as a means of removing the discrimination complained of, answered (R. 417)

> "I have not prepared any schedule of rates to suggest being used as a means to remove the discrimination against Georgia manufacturers, as shown in our exhibit, but do suggest and contend that the rates *now* being operated in Florida be extended into Georgia for interstate application." (Italics ours.)

Again, this same witness said (R. 419):—

> "I do not think that the interstate rates from Florida into Georgia should be higher than the intrastate rates between points in Florida."

Counsel for the Georgia Public Service Commission, Mr. Chairman Perry, speaking to (R. 420) "the extension of the Florida rates under review here, being extended into Georgia," stated:—

> "That is all there is in the case, it is all that has ever been in the case, it is all we are asking for, and all we hope to gain." (R. 421.)

This was said at the close of the testimony of the only witness offered on behalf of the complainant, and after it had for the first time concluded its case (R. 419). Finally, and with reference to the testimony offered on behalf of the Florida Commission, Chairman Perry stated further, with respect to the testimony theretofore given by his witness Price (R. 417, 419):—

> "In view of the statement made by Chairman Wells of the Florida Commission on yesterday, I simply desire to direct attention to the reason of the Georgia Public Service Commission for bringing this application, as fully outlined in the testimony of its rate expert, Mr. E. M. Price. (R. 655.)

Appellants respectfully submit that while the complaint before the Commission did contend that an unjust discrimination against interstate commerce existed by reason of the relation of the interstate rates and the lower intrastate Florida rates, that contention was based throughout on the theory that the only

rates which were unlawful *per se* were the interstate rates. The defendant, the appellants further submit, took substantially the same position, contending that there was nothing unlawful in the intrastate rates *per se*, and contending also that there was nothing unlawful in the interstate rates.

Point II.

THE ORDER OF THE INTERSTATE COMMERCE COMMISSION WAS MADE WITHOUT ANY SUBSTANTIAL EVIDENCE TO SUPPORT IT.

(This is applicable to Assignments of Error III., IV., V., IX., XI., XII., XVI., XXI., XXII., and XXIV.)

It is elementary that an administrative order of the Interstate Commerce Commission fixing rates for the future, unless supported by substantial evidence of record before the Commission, must fall. But the order of the Interstate Commerce Commission in issue here, it is to be noted, was something more than a mere administrative order. It fixed *intrastate* rates on logs for future application "within and throughout the entire State of Florida, without exception,"—and Florida is a big state. Swing a map of Florida on its northwestern corner as a center, and the resulting circle will embrace practically all of southeastern United States and reach to Indianapolis, Indiana.

At the outset, therefore, your appellants desire to point out that substantial evidence alone (even if it could be found in the record before the Commission, —which we deny), would not be sufficient to justify the broad scope of the order in question. For that order not merely fixes future rates,—it enters the domain of a sovereign state and there proceeds to exercise a

power which is inherently a power of the state, and a power which was never conferred upon the federal government. This is recognized by the Congress in that provision of Section 1 of the Interstate Commerce Act which excepts from the scheme of Federal regulation there set up such commerce as is "wholly within one State and not shipped to or from a foreign country from or to any place in the United States." It is recognized also, we think by this Court in the *Shreveport case*, 234 U. S. 342, 358, and in the *Wisconsin case*, 257 U. S. 563, 588.

With no provision in the Constitution whereby the Congress can invade the domain of the State and proceed to regulate the purely intrastate commerce as such, it of course follows that no such power could have been granted by the Congress to the Interstate Commerce Commission, and logically, we think, the Commission cannot justify any exercise of such power merely because "substantial" evidence, sufficient to justify an ordinary exercise of purely administrative action with respect to interstate commerce, was before it (which, of course, we again deny).

Moreover, your appellants believe that law as well as logic supports this conclusion. Not the fixing of an interstate rate at all, but solely the regulation of purely intrastate commerce, is what is here involved. Of such action this Court has said in the *Illinois C. R. Co. v. Public Utilities Com.*, 245 U. S. 493, 510:—

> "In construing Federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a state, even where that may be done, unless, and except so far as, its purpose to do so is clearly

> manifested. (Citing cases.) This being true of an act of Congress, it is obvious that an order of a subordinate agency, such as the Commission, should not be given precedence over a state rate statute otherwise valid, unless, and except so far as, it conforms to a high standard of certainty."

This language in substance approved what had been previously said in the *South Dakota case,* 244 U. S. 617, 625, and was quoted with approval by this Court in the *Wisconsin case* (p. 580).

The "subordinate agency", we insist, does not meet these requirements of "clear manifestation" and "high standard of certainty" by reliance upon what it might deem "substantial" evidence, even though such evidence might exist, which we again deny. The "reserved powers of a state" should not be set at naught by the Federal government,—surely not by any subordinate agency thereof,—except when the *great preponderance of lawful evidence* demands such extraordinary action. The rights of the state are certainly no less sacred than those of the individual.

Precisely this, and nothing less, your appellants respectfully submit, is found in the concurring opinion in *Eastern Texas R. Co. v. Railroad Commission of Texas,* 242 Fed. 300, 307-308, where Circuit Judge Batts said:—

> "But the authority of the Interstate Commerce Commission with reference to intrastate rates is purely incidental and remedial. The qualities of such an order are radically different from those of an order resulting from the exercise of the legislative function involved in rate-making. To hold that it may, under any circumstances, regulate a state rate, is to carry the rules of interpretation to the extreme limit, in view of the proviso in the

first section of the Interstate Commerce Commission Act (Act. Feb. 4, 1887, c. 104, 24 Stat. 379 (Comp. St. 1916, Sec. 8563)). It may be held that it has the power to make such orders affecting intrastate rates as are necessary to prevent discrimination; certainly, the authority will not go beyond the necessary. When the Interstate Commerce Commission acts with reference to such a matter, it makes, or should make, the same character of investigation and the same character of determination that would be made by a court if a carrier charging the intrastate and the interstate rates were prosecuted for a violation of the Interstate Commerce Commission Act. Its action would be more nearly judicial than legislative. Whenever such an order is under consideration by a court, the court would have to determine whether the jurisdiction of the Interstate Commerce Commission had been exceeded; and it would doubtless decline to apply the same rules with reference to the conclusiveness of the action of the Interstate Commerce Commission that obtain when that body is, in the exercise of its established legislative authority, making rates. It would not permit the Interstate Commerce Commission to conclusively determine its jurisdiction by determining the fact of the discrimination upon which its jurisdiction would depend."

There was not before the Interstate Commerce Commission in this proceeding, we respectfully submit, evidence which "persuasively showed," and indicated to "a high degree of certainty," or which "clearly manifested" that the Federal subordinate agency should regulate and raise the rates on logs "within and throughout the entire State of Florida, without exception," and for all time.

(a).—*Such evidence as was offered to the Commission to prove undue prejudice and preference as between particular persons, places and commodities was not state-wide in character and effect.*

There was evidence presented to the Commission for the purpose of demonstrating undue prejudice and preference as between interstate and intrastate commerce with reference to particular persons, places and commodities, but this evidence was, we think, recognized by the Commission to be not state-wide in character and effect. This is shown by the following excerpt from the report of the Commission (R. 792):

> "While complainant assails the rates from all points on defendant's lines in Florida to all points on its lines in Georgia, the record shows that in so far as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry, and cedar, from that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, hereinafter referred to as north Florida, to destinations in Georgia for distances not exceeding 170 miles."

So much for the case of the complainant before the Commission. The defendant, the Atlantic Coast Line Railroad Company, had, as already shown under Point I., denied unlawfulness in the rates brought in issue, and had asked the dismissal of the complaint. More specifically, the defendant's traffic witness before the Commission, Mr. Perrin, stated that the purpose of his evidence was:

> "To establish the reasonableness of the existing interstate charges on logs from stations on our

> line in Florida to destinations on our line in the State of Georgia, that is, from north Florida." (R. 515.)

Furthermore, Mr. Perrin also testified that he was making no proposal to the Interstate Commerce Commission with respect to the intrastate rates in Florida. He testified (R. 495):

> "Q. Now as to your proposal, Mr. Perrin, to remove this discrimination complaint brought by the Georgia Commission by the use of the present Alabama scale, and which you propose to apply interstate between Alabama and Georgia, and I believe South Carolina and Georgia, was it your purpose to convey to the Commission that that scale should also be used in Florida?
>
> "A. Why, I made no proposition as to that, Mr. Price, as to the intrastate rates in Florida, I made no proposition as to that."

On this point, moreover, there was no doubt whatever in the minds of the Judges of the Court below, in their decision upon rehearing (R. 168). They found:

> "No such case is, therefore, shown by the evidence as to justify a state-wide order altering the intrastate rate, because of undue prejudice to shippers and localities, or because of undue discrimination against the *particular* interstate commerce in such logs."

No exception was taken by the United States or by any other defendant below to this finding of the District Court and there is no appeal therefrom to this Court.

Accordingly, appellants say that the evidence presented to the Commission designed to show undue prejudice and preference as between particular persons,

places, and commodities in interstate and intrastate commerce was not state-wide in character and effect, was insufficient to support a "state-wide, without exception" order, and that this is judicially settled.

(b).—*A mere difference in rate levels, interstate as compared with intrastate, is not sufficient to justify an order increasing the intrastate rates within and throughout the entire state.*

The Commission found, and these appellants do not deny, that the Florida intrastate rates on logs were lower than the interstate rates on logs from north Florida to Georgia for the same lengths of haul.

But there is nothing inherently unlawful in different rates for state as compared with interstate transportation. So long ago as *Smyth v. Ames*, 169 U. S. 466, 540, that was recognized by this Court. There the Court said:

> "The question is asked, Are not the people of Nebraska entitled to as cheap rates as the people of Iowa? Of course, relatively they are. That is, the roads may not discriminate against the people of any one state. * * * (But they are not necessarily bound to give absolutely the same rates to the people of all the states), for the kind and amount of business, and the cost thereof, are factors which determine largely the question of rates, and these vary in the several states. The volume of business in one state may be greater per mile, while the cost of construction and of maintenance is less. Hence, to enforce the same rates in both states might result in one great injustice, while in the other it would only be reasonable and fair. Comparisons, therefore, between the rates of two states, are of little value, unless all of the elements that enter into the problem are presented."

Relying upon this case (and others might be cited to the same effect—see *Northern P. R. Co. v. North Dakota ex rel. McCue,* 236 U. S. 585, and cases there cited), appellants respectfully submit that the mere difference in the rate levels cannot be held justification for this extraordinary invasion of states' rights.

Peculiarly enough, the Commission itself recognized these limitations upon its power in dealing with another question of undue prejudice and preference and unjust discrimination against interstate commerce as between other Florida intrastate rates and interstate rates. We refer in this respect to *Rates on Fertilizer Materials within State of Florida,* 151 I. C. C. 602.

The Commission's report in this *Florida Fertilizer case* was issued, it will be noted, only 21 days after the date on which that body finally amended its order in the log case to make doubly certain that the rates which it had there prescribed would be effective "within and throughout the entire state of Florida, without exception." In the *Florida Fertilizer case,* as in the log case, the intrastate rates were lower than the interstate rates for similar hauls, except in the case of hauls under 20 miles. But despite that fact, which the Commission found to exist, at page 608 of its report, the Commission said:

> "With respect to discrimination against interstate commerce generally, it is not shown that the loss of revenue occasioned by the intrastate rates on materials is of sufficient amount to create a substantial burden on such commerce. In *Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co.,* 257 U. S. 563, 590, the Supreme Court said:
>
> "Action of the Interstate Commerce Commission in this regard should be directed to sub-

> stantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce. * * *'" (pp. 608-609.)

Beyond this the Commission said (p. 609):

> "Furthermore, it is not certain that if the Florida intrastate rates were increased to the interstate level, additional revenue would accrue to the carriers, for if the prophesies of the interior plants and of the Florida commission are justified, practically all shipments would be made from the ports with the result that the total charges would probably be no greater than they now are."

It is difficult, indeed almost impossible, to follow the logic of the Commission in these two reports, both affecting the question of low intrastate rates within Florida, and higher interstate rates beyond Florida, on specific commodities, in the one case raising very materially and "freezing" for the future, every rate within and throughout the entire state of Florida for the hauls specified, and in the other case, finding itself powerless to make any such change whatsoever. This brief will discuss at greater length in another subdivision under this Point, the lack of proof that the intrastate rates on logs resulted in an unjust discrimination against, or burden upon, interstate commerce.

In any consideration of the difference between the Florida intrastate and the Florida to Georgia interstate rate levels, the Court should keep in mind that log traffic is obviously a traffic in natural resources; it is a shorthaul traffic, and "the great overwhelming movement is intrastate in character." (R. 495-502.)

These facts would seem to indicate that it is peculiarly and clearly a matter for state and not federal regulation. Rates for log traffic in the southeast are many and varied. (R. 479, 511.) It is not at all uncommon to find particular rates for particular movements determined by circumstances surrounding those particular movements. (R. 501.)

The scale prescribed by the Interstate Commerce Commission for application state-wide throughout Florida is the equivalent of the Alabama State scale. (R. 794, 795.) The mileage scales on intrastate log traffic in Georgia, and in North Carolina, and to a considerable extent in South Carolina, are lower than the Alabama scale. (R. 387-395.)

(c).—*The fact that the rates on logs intrastate within Florida are lower than certain interstate rates in the same general territory of movement on other low grade commodities, constitutes no justification for a state-wide order increasing the intrastate rates on logs.*

The report of the Commission shows that the earnings under the Florida intrastate rates on logs are materially lower than the earnings under the interstate rates from Florida to Georgia on brick, sand, lime, and cement; also, that they are lower than rates on sand and gravel in the Southeast. (R. 797-798.)

The evidence of this character before the Commission was pertinent on the issue of undue prejudice and preference as between particular persons, places, and commodities, and its weight would of course vary accordingly as the circumstances and conditions of the several transportations involved were similar or dis-

similar. But it is difficult to see where comparisons of this sort may be used by the administrative body as the basis of a finding of unjust discrimination against interstate commerce generally and upon a state-wide basis. As will be shown subsequently under this same topic of argument, there was no evidence of circumstances and conditions of transportation generally.

(*d*).—*There was no evidence before the Commission showing or tending to show similarity in the circumstances and conditions surrounding the transportation of log traffic intrastate within and throughout Florida and interstate from Florida to Georgia.*

The Commission found with respect to the transportation in interstate commerce and the transportation in intrastate commerce that:—

> "The transportation services in each instance are performed by defendant under substantially similar circumstances and conditions." (R. 799.)

The Court will observe that this finding constitutes the closing paragraph of the Commission's report. It is not found in the discussion by the Commission of the evidence of record before it. It follows the Commission's final conclusions on the entire matter where, logically, it should precede those conclusions. It bears unmistakable evidence of being an afterthought,—something considered to be necessary to support a conclusion that might otherwise have been considered defective because of its absence.

But the fact is that there was no evidence before

the Commission to demonstrate a similarity in the interstate and intrastate transportations involved. The complainant was without knowledge on that subject. (R. 705-706.) There was no interstate movement of logs from Florida to Georgia, and the Commission so found. (R. 796.) To be sure, the Commission further found that witnesses attributed this lack of interstate movement to the substantially higher level of the rates interstate than intrastate. But the fact is that these witnesses were a unit in the view that there could be no movement under the interstate rates under attack (and the prescribed rates are substantially the same) and this is mathematically demonstrable, as shown below. When these witnesses stated before the Commission that there would be a movement if the interstate rates were reasonable, they referred, in mentioning reasonable rates, to the rates then effective within the State of Florida (or substantially those rates) and which were disestablished by the order of the Interstate Commerce Commission in this proceeding (see *Ante,* pp. 8-10).

With no interstate movement of logs from Florida to Georgia whatever, the evidence before the Commission shows that there were very considerable intrastate movements within Florida; that these were regular movements, usually in trainload lots; that the logs were loaded on special log cars; that these log cars were taken from the defendant carrier's line by a privately owned log railroad into the timber and returned loaded and delivered to the carrier in trainload lots; that the trainloads thus delivered intact were hauled to the one destination of the particular shipper involved, and delivered intact at his mill with no detailed distribution service necessary as to individual cars; that the

reverse haul of empty cars was likewise a trainload movement of special equipment from day to day with no detailed assembly service at the origin or distribution service at the destination involved; and that, in all, it was a fast service, round trip of the loaded and empty cars being accomplished in 48 hours. See testimony of Perrin (R. 470, 471, 499, 500), Fleishel (600, 601).

Transportation of this character was admitted by the defendant before the Commission to be an economical and cheap service (Perrin, R. 476, 477). The same witness testified that there was some movement of logs intrastate within Florida in single carlots, and, a second time, that there was a substantial movement of this sort. But although the figures were in the possession of the carrier to demonstrate exactly how much movement there was in single carloads as distinguished from trainloads, no evidence to show such figures was offered. (See Perrin, R. 493, 513.)

Appellants therefore respectfully submit that the circumstances and conditions of transportation of logs intrastate within Florida and interstate from Florida to Georgia on the Atlantic Coast Line Railroad were not shown to be similar, and in fact were in practically all respects substantially dissimilar.

(e).—*There was no evidence before the Commission showing or tending to show that interstate Florida to Georgia and intrastate within Florida transportation of logs would be maintained on the rates prescribed by the Commission.*

The Commission's report, after first finding that there is no movement of logs from Florida to Georgia (R. 796) recites (R. 798):—

"The evidence is not convincing that logs could not or would not move from Florida to Georgia if the interstate rates and the Florida intrastate rates were on the same level."

The rates prescribed by the Commission are only a trifle lower than the rates complained against by the Georgia Public Service Commission, and these latter, according to the witnesses for the complainant before the Commission, would not permit the traffic to move. (R. 422-424; 427, 428, 429, 431, 433; 533; 557.) There was, to be sure, one witness who first insisted that the Florida intrastate rates would be the reasonable rates for interstate application, and subsequently was of the opinion that he would ship interstate on any rate parity (R. 533, 537). A second witness took the position that he could ship logs interstate from Florida to Georgia on any rate so long as it was no higher actually than the intrastate rate for the same haul within Florida. This testimony, and the particular circumstances under which it was given, is deserving of attention by the Court. At the first hearing before the Commission on this complaint, it quite definitely appeared on behalf of the Georgia Public Service Commission, and such Georgia lumbermen who supported it, that there could be no movement of logs interstate from Florida to Georgia except upon the then-effective intrastate rates within Florida. The witness in question, who took a somewhat contrary position, appeared at the second hearing before the Commission, and on that occasion testified (R. 545):

"I don't ship logs at all by railroad and I have had absolutely no experience in that. I have talked with practical lumber men to find out if it would be a practical thing to ship logs any great length

> and my impression is that it can be done with an equitable freight rate and other conditions. Of course every condition has to be considered, but, taking a log loaded on a car, I figure that if the rate were the same to me as it was to any competitor, why I have an even break with him. I have made calculations as to whether I could ship profitably from Florida to Georgia. I didn't have to do it myself. The Atlantic Coast Line did it for me."

Apparently the view expressed was not so much the view of this particular shipper as it was the view of the defendant Atlantic Coast Line Railroad Company.

The Court will take notice that this witness admitted that he was entirely without experience in the business concerning which he spoke. His hearsay information, received from other lumber men not named by him, left him merely with an "impression". The calculations upon which he said he relied were Providentially made and furnished to him by unnamed agents of the Railroad which was the defendant in the proceeding wherein the testimony was given and this occurred during the interim between first and second hearings of the matter before the Commission. Surely such testimony can hardly be said to constitute the "substantial" evidence upon which the Interstate Commerce Commission must rely in order to justify this invasion of the rights of a sovereign State.

The intrastate rates prescribed by the Interstate Commerce Commission under the powers of Section 13 must be such as will move the traffic and continue to produce the revenues for the carrier, otherwise the purpose of Section 13, interlocked as it is, with Section 15a, is not accomplished. This it would seem is recognized by this Court in the *Wiscon-*

sin case, supra, at page 591. In the instant case the Interstate Commerce Commission finds in terms that there then existed no interstate traffic in logs from Florida to Georgia and the evidence before it, except such as is discussed in detail just above, was clearly to the effect that there would be no interstate commerce in logs from Florida to Georgia except upon substantially the rates then effective within Florida. Indeed the Commission did not find as a fact that interstate traffic in logs would or could result if the interstate and intrastate rates were on the same level. The extent of the finding was that "the evidence is not convincing, that logs could not or would not move from Florida to Georgia if the interstate rates and the Florida intrastate rates were on the same level." (R. 798.)

The evidence before the Commission showed that to produce a given weight of milled lumber, it was necessary to move from the timber to the mill three times the weight of the lumber in rough logs (R. 412). For the haul of 158 miles,—the average haul on the Florida scale (R. 522),—the rate prescribed by the Commission for the transportation of these logs is 7.5 cents per 100 pounds (R. 801). It follows that to lay down 300 pounds of logs for the manufacture of 100 pounds of lumber in a south Georgia mill or at a mill in Florida for a haul of 158 miles, would cost 22.5 cents. This would be the equivalent of $112.50 for each carload of 50,000 pounds of milled lumber. There is no consequential difference in the rates on lumber as between mills in south Georgia and mills in north Florida (R. 384, 385) to the consuming markets for their output. Consequently no advantage would accrue to the shipper of logs as aforesaid in competition with a mill, of

which there are many, sawing lumber right in the timber and requiring no common carrier transportation of logs to the mill. The mill shipping logs on the Commission's rates, whether located in south Georgia or in north Florida, would operate under a handicap of $112.50 per average carload of 50,000 pounds of milled lumber.

There is not margin enough in the lumber manufacturing business to permit the absorption of any handicap of this sort (See R. 422-423, 427, 428), especially as the record shows that the competition of the finished product is not between Florida and Georgia manufacturers of lumber (for broadly speaking their products are sold in different markets, R. 604), but between all manufacturers of lumber reaching a particular market, with the price usually fixed by Pacific coast manufacturers (R. 425-426, 447, 448, 574, 603).

(f).—*There was no evidence before the Commission showing or tending to show that the Florida intrastate rates on logs constituted a burden upon interstate commerce, or that the increase ordered by the Interstate Commerce Commission in such rates was necessary to remove a burden upon interstate commerce.*

A significant feature of the decisions of this Court in the *Wisconsin* and *New York cases* was the reliance by the Court upon a money burden which the intrastate rates condemned in those proceedings by the Interstate Commerce Commission cast upon interstate commerce. This is more specifically referred to in the argument under Point IV. of this brief. There was no showing of any money burden upon interstate commerce resulting from the Florida intrastate rates on logs which the Interstate Commerce Commission con-

demned in this proceeding. The word "burden" is not to be found in the report of the Interstate Commerce Commission here under review.

The truth is that in the record before the Commission there were no facts from which the Commission could determine that there was a money burden upon interstate commerce by virtue of the Florida intrastate rates on logs. There was no showing of the amount of that tonnage. There was no showing of the gross revenues resulting from such transportation service within the State of Florida. There was a showing of total gross and net revenues of the carrier defendant before the Commission indicating its great prosperity, and that it needed no increases in rates (R. 704, 396). But there was no showing of the extent to which those revenues were or would be burdened by the Florida intrastate rates on logs, nor of the extent to which those revenues would be increased were those rates increased. The facts in all these respects were peculiarly facts in the possession of the defendant Atlantic Coast Line Railroad Company in the proceedings before the Interstate Commerce Commission. But that defendat, although it made a showing of its gross revenues from log transportation on its entire system ramifying throughout the southeastern states, for just one month (R. 287) testified with respect to the Florida intrastate log revenue to no more than the following:—

> "We have no figures to segregate one special movement from any other part of the general movement of logs. So far as the amount of revenue is concerned, under the trainload movements under the Cummer scale, I cannot estimate it. Of course I do know that the movement under these

> log contracts in every-day train movements is a very large movement of logs. As to whether it constitutes a very large proportion of the total revenue derived by the Atlantic Coast Line Railroad for the transportation of logs throughout its whole system, I would have to prepare statistics to say. I would not try to estimate it." (Perrin, R. 514-515.)

What the Interstate Commerce Commission found was that the Florida intrastate rates were "less than reasonably compensatory (R. 798), and further, that:—

> "The evidence is not convincing that logs could not or would not move from Florida to Georgia if the interstate rates and the Florida intrastate rates were on the same level." (R. 798.)

This raises the question, how would the Commission know that the rates were less than reasonably compensatory. The evidence did, to be sure, show that the rates on logs intrastate were on a lower level than the rates on logs interstate, or than the rates on certain other low grade commodities. But this, as is shown elsewhere herein, does not necessarily imply that the intrastate rates on logs are unreasonably low or noncompensatory. Comparisons of that character are of little value unless there is a showing of the extent to which the services of transportation on the rates compared are similar, and as already shown there was no evidence of that sort. *Smyth vs. Ames, supra,* p. 540. On the other hand, the evidence before the Commission quite positively showed that the log traffic within the State of Florida was conducted under somewhat unique circumstances and conditions which the defendant Atlantic Coast Line before the Commission admitted were conducive to low cost of transportation (*Ante,* pp. 39-40).

The Commission also had before it evidence purporting to show the cost of log transportation in trainloads within the State of Florida, between particular stations. There was a showing of that sort by the defendant Atlantic Coast Line, and a critical analysis of it by the Florida Railroad Commission. Both showed that the intrastate rates left to the Atlantic Coast Line some measure of profit and the showing of the Florida Commission indicated that that measure of profit was quite considerable. But these cost studies the Commission disregarded with the statement that (R. 797):—

> "Both cost studies are based on certain arbitrary assumptions and both are based on movements in trainloads from two points of origin to one destination. Neither can be accepted to show the approximate actual cost of transporting logs in single carloads intrastate throughout Florida."

This finding, it would seem, is a clear disregard of these cost studies by the Commission as unreliable; it was not merely a case of the Commission ruling out the basic facts shown, as was stated by the Court below (R. 169). Furthermore, while the facts which definitely show the extent to which the Florida intrastate traffic was handled in trainloads or in single carloads were again facts peculiarly within the possession of the defendant Atlantic Coast Line Railroad Company, that defendant did not apprise the Commission of the exact situation, and went no farther than the testimony of its traffic manager that the Coast Line handled some single car loads (Perrin, R. 493), and again, that "there is a good substantial movement other than that that is moving in regular trains", but he could not say just how many. (Perrin, R. 513.)

But as this Court and the Commission itself has had occasion to observe, it takes more than intrastate rates and losses on intrastate rates to constitute a burden upon interstate commerce. Rates of themselves do not produce revenues. Revenues are derived from the transportation of tonnage upon rates. It is therefore necessary to consider in every instance where the question of a burden upon interstate commerce by virtue of intrastate rates arises, whether or not other intrastate rates would move the traffic and produce the tonnage which would in turn produce revenue. This is emphatically shown by the decision of the Court in the *Wisconsin case, supra,* where, after justifying the order of the Interstate Commerce Commission requiring the increase of the Wisconsin intrastate rates, the Court further said (page 591):

> "It may well turn out that the effect of a general order in increasing all rates, like the one at bar, will, in particular localities, reduce income instead of increasing it, by discouraging patronage. Such cases would be within the saving clause of the order herein, and make proper an application to the Interstate Commerce Commission for appropriate exception."

It may be noted that in the order of the Commission here under review, there was no such saving clause as the Court mentions in the foregoing quotation.

We refer in this same respect to the recent decision of the Interstate Commerce Commission in the *Florida Fertilizer case, supra,* at 609. There the Commission said:

> "Furthermore, it is not certain that if the Florida intrastate rates were increased to the inter-

state level, additional revenue would accrue to the carriers, for if the prophesies of the interior plants and of the Florida commission are justified, practically all shipments would be made from the ports with the result that the total charges would probably be no greater than they now are."

This language is a distinct recognition by the Commission of that which it seems to have overlooked in the log case here under review. The fact of the matter is that the testimony of the log case embraced the same predictions by the Florida log shippers to the effect that increases in the Florida intrastate rates would destroy the traffic and in fact reduce the revenues of the defendant carrier. This testimony the Commission adverts to in its Report (R. 797-798). But not only did the Florida log shippers testify to this effect. Such, indeed, was the testimony of the Georgia Commission and of the Georgia lumbermen who appeared before the Commission in support of the complaint of the Georgia Public Service Commission seeking the application interstate from Florida to Georgia of the then effective lower Florida intrastate rates. These witnesses made it clear that logs would not move from Florida to Georgia on the interstate rates complained against, and it is to be noted that the interstate rates prescribed by the Commission constituted no material reductions as compared with the interstate rates complained against by the State of Georgia (R. 404, 422, 427, 533).

The Court should particularly observe that the finding of the Interstate Commerce Commission in the log rate case is not a positive finding that the Florida intrastate rates constituted a burden upon interstate commerce. It is not a positive finding that even at the

rates prescribed for application within the State of Florida the traffic would continue to move; there was no finding at all that the traffic would continue to move within the State of Florida; there was merely the negative finding that (R. 798):

> "The evidence is not convincing that logs could not or would not move from Florida to Georgia if the interstate rates and the Florida intrastate rates were on the same level."

In the proceeding before the Commission, these appellants as interveners, in entire honesty and sincerity emphatically demonstrated that these higher intrastate rates would destroy the traffic, and that, instead of removing a burden upon interstate commerce, the Commission by increasing the Florida intrastate rates would merely create a burden. The Commission refers to that testimony at some length in its report in the log case (R. 797).

We submit that taking the report of the Commission in the *Florida Fertilizer case, supra,* as a consequence of which the Commission refused to permit any increase in the Florida intrastate rates on fertilizer, and the report in the Florida log case, wherein the Commission increased the intrastate rates on logs in Florida, this Court will be convinced that the more emphatic demonstration of an entire loss of state traffic was made by these appellants as interveners before the Commission in the latter proceeding. This is the more so because the certainty of such loss is mathematically demonstrable, as already shown, in the log case, *ante,* pp. 43-44.

Point III.

THE ORDER OF THE INTERSTATE COMMERCE COMMISSION WAS MADE WITHOUT THE FULL HEARING REQUIRED AS PRECEDENT THERETO BY THE INTERSTATE COMMERCE ACT.

(This is applicable to Assignments of Error XVIII., XXV., and XXVI.)

In the recent case of *Truax v. Corrigan*, 257 U. S. 312, 332, this Court said:—

> "The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law,—a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial, so that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society."

Those provisions of the Interstate Commerce Act which provide a "full hearing" as a necessary precedent to any action either upon complaint or upon investigation on the Commission's motion fixing rates for the future are found in Section 15. Of these provisions this Court said in *Interstate Commerce Com. v. Louisville & N. R. Co.*, 227 U. S. 88, 91:—

> "But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless." * * *
>
> "In the comparatively few cases in which such questions have arisen it has been distinctly rec-

> ognized that administrative orders, *quasi-judicial* in character, are void if a hearing was denied, if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence' (citing many cases), or if the facts found do not, as a matter of law, support the order made (citing cases)."

More recently in the *New England Divisions case* (*Akron, C. & Y. R. Co. v. United States*, 261 U. S. 184, 200), this Court further said:—

> "Whether a hearing was full must be determined by the character of the hearing, not by that of the order entered thereon. A full hearing is one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the standpoint of justice and law, of the step asked to be taken."

And in *Baltimore & O. R. Co. v. United States*, 264 U. S. 258, 265, the Court added that:—

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it."

These appellants respectfully submit that the proceeding before the Commission as a result of which the rates on logs intrastate within Florida were fixed by the Interstate Commerce Commission and removed entirely from the purview of the Florida authorities was not the full hearing guaranteed by the Constitution and by Section 15 of the Interstate Commerce Act.

It is pertinent to point out that the traffic in question was definitely shown by the evidence before the Commission to be a short haul traffic and over-whelmingly

intrastate in character. The regulation of the rates applicable to it was therefore peculiarly a regulation of rates and of a class of rates that should be left to the authorities of the State. This, it would seem, was a case where there was such serious doubt that it should have been resolved in favor of the State power. See *Arkansas Railroad Com. v. Chicago, R. I. & P. R. Co.*, 274 U. S. 597, 603.

But consider the manner in which the complaint was brought to the Federal body. It was made by the rate regulating body of a neighboring state; the complaint prayed for action by the Interstate Commerce Commission only on interstate rates; the complainant upon hearing made it clear that it made no attack whatever upon the Florida intrastate rates, and, indeed, seized upon those rates as the criterion of what the interstate rates should be; the defendant before the Commission made no attack upon the intrastate rates.

Contemporaneously, the intrastate rates on the same commodity, logs, applicable within the neighboring and complaining state of Georgia were shown to be lower than the interstate rates under attack, and intrastate log rates in the Carolinas were likewise shown to be lower. It is difficult to understand why, in the face of these facts, the Interstate Commerce Commission should still have persisted in the view that the Florida rates for this single railroad were not only to be fixed by it for the future, but that this might be done regardless of the fact that thereby Florida was ousted of its jurisdiction over log rates permanently, while Georgia and the Carolinas were left free as before, to regulate their own rates on the same railroad.

With no plea whatever to the Interstate Commerce Commission that the Florida intrastate rates be raised,

and with no evidence, as we contend is amply demonstrated elsewhere herein, to show that such rates should be raised, the situation was one, appellants submit, in which the Commission should have recognized that comity between states required a different method of procedure. If the rates within one of these states were to be raised, the Commission, as it might have done under its power to investigate all these rates on its own motion, should have considered the *entire* question in the *entire* southeast, or certainly in Florida, Georgia, and the Carolinas. This would have accorded similar treatment to all and would not have produced the rather ridiculous situation in which log rates now are, with the rates in Florida frozen tight by action of the Interstate Commerce Commission, and with rates in Georgia and in the Carolinas left at a lower level, and solely within the purview at least in the first instance of the respective state commissions.

But these appellants further insist that Congress never intended by the amendments of Transportation Act, 1920, to empower the Interstate Commerce Commission to prescribe intrastate rates, state-wide, without exception, in any proceeding such as this.

The only specific power conferred by the Statute upon the Interstate Commerce Commission to fix intrastate rates is that found in Section 13 (4) of the Act. And this power the Commission is authorized to employ only

> "Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one

> hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, * * *."

The words "in any such investigation" in Section 13 (4) obviously relate back and refer to the language of the preceding paragraph, Section 13 (3). This begins

> "Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, * * *."

In other words, the power of the Commission to fix intrastate rates under Section 13 (4) can be employed only in those investigations contemplated by the provisions of the Act wherein "there shall be brought in issue" the state rate.

The statute names five classes of proceedings wherein the Commission may fix rates for the future:—(1) The proceeding upon complaint by "any person, firm, corporation, company, or association, or any mercantile, agricultural or manufacturing society or other organization, or any body politic or municipal organization, or any common carriers," under Section 13 (1); (2) The proceeding upon complaint "by the railroad commissioner or railroad commission of any State or Territory," under Section 13 (2); (3) The "inquiry, on its own motion," instituted by the Commission "in any case and as to any matter or thing

concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act," under Section 13 (2); (4) The "investigation instituted upon petition of the carrier concerned," in which "there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any state," under Section 13 (3); and (5), the investigation made by the Commission "in extension of any pending complaint," under Section 15 (1).

As already said, the proceeding before the Commission was distinctly of the "Complaint and Answer" variety,—an adversary proceeding between the complainant and the carrier authorized to be filed by Section 13 (1) and more specifically authorized to be filed by a State Railroad Commission under Section 13 (2). There was no inquiry by the Commission on its own motion into subjects of investigation named by it—no proceeding on its own motion, in other words, under Section 13 (2). There was no petition by the Atlantic Coast Line Railroad Company, or by any other carrier (if any) concerned, for any investigation of the Florida intrastate log rates, under Section 13 (3). And finally, there was no order of the Commission by way of extension of the investigation of the pending complaint of the Georgia Public Service Commission, under Section 15 (1). There was nothing before the Commission requiring any investigation by it or requiring any action or any order fixing rates for the future by it, except the complaint of the Georgia Public Service Commission.

The only manner in which the Florida intrastate rates on logs were brought in issue before the Interstate Commerce Commission by the complaint of the Georgia Public Service Commission was in the allegation of unlawfulness in the *relationship* between those rates and the interstate rates on logs from Florida to Georgia for hauls of the same length. There was no attack whatever by the Georgia Public Service Commission against the *level* of the Florida intrastate rates on logs. Indeed, the Georgia Public Service Commission, far from attacking the level of the Florida intrastate rates as unreasonably low, insisted that those rates constituted a fair measure of what the interstate rates should be for the transportation of logs from Florida to Georgia, and the complaint of the Georgia Public Service Commission fundamentally was directed against the unreasonably high level of the interstate rates from Florida to Georgia. (R. 193-197.)

It cannot be lost sight of that the complaint of the Georgia Public Service Commission brought the Florida intrastate rates within the purview of the Interstate Commerce Commission only on the issue of relationship. Only with respect to the issue of relationship, therefore, could the Interstate Commerce Commission have acted under that complaint. Moreover, its action must necessarily have been restricted territorially to the territorial scope of the primary relief sought, and this, as elsewhere shown herein, was found by the Commission itself and by the District Court also, to be limited to north Florida (R. 792 and R. 50). When, therefore, the Interstate Commerce Commission, as its final amended order actually did, prescribed rates on logs "within and throughout the entire

State of Florida, without exception," the Interstate Commerce Commission went beyond the scope of the proceedings in which it purported to act and went beyond the limited statutory power which it possesses in the premises.

We say that Congress never intended by the enactments of 1920 to authorize the Interstate Commerce Commission to prescribe intrastate rates upon a state-wide basis in any proceeding such as this. Were it conceded that the Commission has that power, it would necessarily follow that the Federal Government could prescribe state-wide state rates, from the standpoint of both relationship with interstate rates and of level, in any proceeding which brings in issue the relationship between an interstate and an intrastate rate prevailing in any portion of a State, however trifling that portion may be. Surely if such broad powers were intended by Congress to be conferred upon the Interstate Commerce Commission, it would be in language more direct and positive than what is found in Section 13 (4) of the Interstate Commerce Act.

The District Court, in reaching the conclusion that there had been the full hearing guaranteed by the statute, seemed to think that the rights of the appellants had been prejudiced because (sic) after the Examiner had expressly found that the Florida intrastate rates were not unremunerative nor burdensome, these appellants discussed that finding in replying to other parties' exceptions to the Examiner's report and did not contend that that evidence was foreign to the investigation. Further, the Court was influenced by the fact that when these appellants as interveners before the Commission made application for rehearing they failed to ask for a re-opening for the presentation of

further evidence, but merely asked for a re-argument on the evidence already taken.

Even if the Court were wholly correct in its statement of what was done by the appellants in this connection (which we deny) it would be sufficient to say,—

(a) That Constitutional rights will not be deemed to have been so lightly waived in any such manner as this, or,

(b) That administrative power not conferred by the Interstate Commerce Act itself, and indeed prohibited by the Constitution, cannot be lodged in the Interstate Commerce Commission in any such way as this.

But the record demonstrates there was no waiver or recognition of power by the appellants or any admission, express or implied, that the hearing was full or that the Commission had the power to make a revenue order.

From the very beginning the appellants denied the power of the Commission and the sufficiency of the evidence, and saved this point not once but many times throughout the record. At the conclusion of the complainants' evidence the appellants filed a written motion (R. 211, R. 467) expressly challenging the power of the Commission and the sufficiency of the evidence, and expressly reserved their rights in the premises. The presiding Examiner did not rule on this motion but referred it to the Commission itself (R. 467). After all of the evidence of all other parties had been submitted the appellants again insisted upon that motion, and expressly announced that any testimony offered by them was without prejudice to that motion (R. 562).

It was in this state of the record that these appellants as interveners before the Commission and with-

out prejudice to any rights of theirs in the matter submitted such evidence as they deemed might be pertinent should the Commission overrule their motion, *but not addressed to a revenue case.* Then, after the issue of a proposed report by the Commission's Examiner favorable to the contentions of these appellants, and after exceptions had been filed to that report by other parties, these appellants as such interveners again found it incumbent upon them, because the Commission had not yet ruled upon the aforesaid motion, to reply to such exceptions. At that time and in that reply appellants expressly stated that (R. 779),

> "There are no issues before this Commission calling for the fixation of minimum reasonable rates on Florida intrastate traffic. No such issue was tendered in the complaint and most certainly the complainant made no effort to set up such a case in its evidence."

And this, of course, was again without prejudice to their interest and rights in the matter for those had been saved by the motion which had not, up to this time, been acted upon by the Commission. Indeed, it was not until the Commission finally disposed of the controversy on its merits that the motion was formally denied (R. 792).

Again, the very report of the Interstate Commerce Commission itself shows (R. 792) that at the hearing *before the Commission* the appellants were still insisting upon the insufficiency of the evidence and the want of power on the part of the Commission. For then and there in that report the Commission in terms denied the motion on the part of the appellants to dis-

miss, and over the protest of the appellants held that the evidence justified the consideration of the case on its merits.

Furthermore, the trial court entirely overlooked the fact that in the petition for reconsideration and reargument addressed to the whole Commission the appellants did the very things that the trial court said the appellants ought to have done, though we submit that in the state of the record it was wholly unnecessary for the appellants to have done so. In that petition the appellants not once but several times denied that there was power in the Commission to make a revenue order under the restrictive issues and the evidence in the case (R. 819, R. 831-835). And so there was no recognition or waiver either in law or in fact.

Appellants submit in conclusion upon this point that there was not that full hearing which the statute provides, and which the Constitution guarantees, and that both the Interstate Commerce Commission and the Court below failed to recognize the word of caution expressed by this Court with respect to the proper handling of this class of cases in *Lawrence v. St. Louis-San Francisco Ry. Co.*, 274 U. S. 588, 594-595, where it said:—

> "But as bearing upon the propriety of issuing the temporary injunction, the fact is important that the controversy concerns the respective powers of the nation and of the states over railroads engaged in interstate commerce. Such railroads are subject to regulation by both the state and the United States. The delimitation of the respective powers of the two governments requires often nice adjustments. The federal power is paramount. But public interest demands that

> whenever possible conflicts between the two authorities and irritation be avoided. To this end it is important that the federal power be not exerted unnecessarily, hastily, or harshly. It is important also that the demands of comity and courtesy, as well as of the law, be deferred to."

This case, and this very language, was approved by this Court only so recently as March 12th, 1930, in *R. R. Commission of Wisconsin v. Maxcy,* Advance opinions, p. 337, 338, where the court said:

> "The importance is even greater where the decree enjoins the enforcement of a State law or the action of State officials thereunder. For then the respect due to the State demands that the need for nullifying the action of its legislature or of its executive officials be persuasively shown."

Point IV.

THE ORDER OF THE INTERSTATE COMMERCE COMMISSION WAS BEYOND THE SCOPE OF ITS STATUTORY POWER.

(This is applicable to Assignments of Error II. and XIX.)

> "The intention to interfere with the state function of regulating intrastate rates,"

said this Court in a recent case,

> "is not to be presumed. Where there is serious doubt whether an order of the Interstate Commerce Commission extends to intrastate rates, the doubt should be resolved in favor of the State power." *Arkansas Railroad Com. v. Chicago, R. I. & P. R. Co.,* 274 U. S. 597, 603.

However, under certain oircumstances there was power in the Interstate Commerce Act as it stood before the amendments of Transportation Act, 1920, to reach into the confines of an individual state and regulate intrastate rates. This was an incident of the power in section 3 of the Interstate Commerce Act, to cause the removal of undue preference and prejudice. In the *Shreveport Case* (*Houston, E. & W. T. R. Co. v. United States*), 234 U. S. 342, (1914) this Court upheld such an exercise of power by the Interstate Commerce Commission.

But the power of the Commission under Section 3 was by no means a power to regulate intrastate commerce generally. It was limited to the particular instances of undue prejudice and preference as between interstate and intrastate commerce shown to exist in the evidence before the Commission. And the demonstrated existence of specific instances of undue prejudice and preference as between the intrastate and interstate commerce were held by this Court not sufficient to justify an order by the Interstate Commerce Commission requiring state-wide increases in intrastate rates. *American Exp. Co. v. South Dakota ex rel. Caldwell*, 244 U. S. 617 (1917). This was so even though the Interstate Commerce Commission additionally found that the state rates giving rise to the undue preference also imposed "an unreasonable and unlawful burden on interstate passenger traffic." *Illinois C. R. Co. v. Public Utilities Com.*, 245 U. S. 493 (1918) and see *Business Men's League of St. Louis v. A. T. & S. F. Ry. Co.*, 41 I. C. C. 13, 28.

By the amendments of Transportation Act, 1920, there was for the first time incorporated within the Interstate Commerce Act (Section 13 (3) and (4)) a

denouncement of any "undue, unreasonable, or unjust discrimination against interstate or foreign commerce." And the Commission, in Section 13 (4), was specifically empowered to take action to remove such discrimination.

The Wisconsin Case (*Railroad Commission v. Chicago, B. & Q. R. Co.*, 257 U. S. 563 (1921)) brought to this Court for review an order of the Interstate Commerce Commission, based upon a finding that lower passenger fares within Wisconsin as compared with higher passenger fares between Wisconsin and points elsewhere, resulted (*Wisconsin Passenger Fares*, 59 I. C. C. 391, 396) :—

> "in undue prejudice to persons traveling in interstate commerce within the state of Wisconsin and between points in the state of Wisconsin and points in other states; in undue preference of and advantage to persons traveling intrastate in Wisconsin; and in unjust discrimination against interstate commerce."

The Commission's order was state-wide, requiring the increase of all passenger fares within and throughout Wisconsin from the basis of 3 cents per mile to the basis of 3.6 cents per mile. This Court first found and held (pp. 579-580) :—

> "The order in this case, however, is much wider than the orders made in the proceedings following the *Shreveport* and *Illinois C. R. Co. cases*. There, as here, the report of the Commission showed discrimination against persons and localities at border points, and the orders were extended to include all rates or fares from all points in the State to border points. But this order is not so

restricted. It includes fares between all interior points, although neither may be near the border, and the fares between them may not work a discrimination against interstate travelers at all. Nothing in the precedents cited justifies an order affecting all rates of a general description when it is clear that this would include many rates not within the proper class or the reason of the order. * * * We cannot sustain the sweep of the order in this case on the showing of discriminations against persons or places alone."

But the Court further took particular notice of the (then) new denouncement of "undue, unreasonable, and unjust discrimination against interstate or foreign commerce, which the Interstate Commerce Commission may remove by raising the intrastate fares." (p. 581) Taking cognizance of the Commission's finding that the lower Wisconsin fares would produce millions of dollars less revenue for the railroads than would the higher interstate fares (p 566), the Court said (p. 585):—

"The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of of the United States. This is expressly declared in Section 15a to be one of the purposes of the bill."

Of Section 15a, also a product of Transportation Act, 1920, the Court had previously said (p. 584):—

"The latter, the most novel and most important feature of the act, requires the Commission so to prescribe rates as to enable the carriers as a whole,

> or in groups selected by the Commission, to earn an aggregate annual net railway operating income equal to a fair return on the aggregate value of the railway property used in transportation. For two years, the return is to be 5½ per cent, with ½ per cent for improvements, and thereafter is to be fixed by the commission."

In this view of the situation confronting the Commission and under review by the Court, it was held that (pp. 589-590):—

> "Congress, in its control of its interstate commerce system, is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonably compensatory return for all the work it does. The states are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the interstate business. Congress, as the dominant controller of interstate commerce, may, therefore, restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear. (Citing cases) In such development, it can impose any reasonable condition on a state's use of interstate carriers for intrastate commerce it deems necessary or desirable. This is because of the supremacy of the national power in this field."

Simultaneously, this Court decided the *New York Case* (*New York v. United States*, 257 U. S. 591), wherein were raised questions similar to those dis-

posed of in the *Wisconsin Case*. The Court said (p. 601):—

> "The main objections to the order are the same as those presented, considered, and overruled in the Wisconsin Rate Case, just decided,"

and then proceeded to show and rely upon the fact that the state rates which the Interstate Commerce Commission had condemned would result in annual gross operating revenues

> "less, by nearly twelve millions of dollars, than those revenues (would be) if the intrastate fares and rates were on the same level as the interstate rates, as fixed by the Interstate Commerce Commission." (p. 601.)

The point to be observed is that this Court has found it impossible to justify state-wide prescription of intrastate rates by the Federal Government save where such was definitely shown to be necessary in order to remove state-wide undue preference with resulting undue prejudice against interstate commerce, or, since 1920, an unjust discrimination against interstate commerce so substantial as to result in a "burden" upon that commerce. This was recognized by the Court below (R. 168). No case has been found where a state-wide prescription of intrastate rates has been justified without substantial evidence to this effect. What is more, this Court has carried the same principle into its decisions touching upon the power of the Federal Government to regulate phases of discriminations against interstate commerce other than those effected in rate adjustments.

Thus, with respect to the action of the Federal Commission touching upon the abandonment of railroad properties located wholly within a state, this Court has pointed out that the Interstate Commerce Commission cannot permit or require such abandonment where continued operation of the property in question solely in intrastate commerce is merely a matter of local concern and,

> "interstate and foreign commerce will not be burdened or affected by any shortage in the earnings, nor will any carrier in such commerce have to bear or make good the shortage. It is not as if the road were a branch or extension whose unremunerative operation would or might burden or cripple the main line, and thereby affect its utility or service as an artery of interstate and foreign commerce." *Texas v. Eastern Texas R. Co.,* 258 U. S. 204, 216, 217.

In another instance where the Federal action authorizing abandonment was upheld, this Court relied upon the fact that,

> "The certificate issues not primarily to protect the railroad, but to protect interstate commerce from undue burdens or discriminations." *Colorado v. United States,* 271 U. S. 153, 162.

The same conception of the necessity for that power in the Federal Government,—to protect interstate commerce against the imposition of undue burdens by State action,—is found in the decision of this Court in *Lehigh Valley R. Co. v. Board of Public Utility Comrs.,* 278 U. S. 24. There, commenting upon state orders requiring the elimination by railroads of grade

crossings at very considerable expense, which orders, it was contended, imposed a direct burden upon interstate commerce in violation of Section 15a, the Court said (p. 35):—

> "It is not necessary for us to controvert the proposition that unreasonably extravagant grade crossings are to be enjoined not only as violations of the 14th Amendment but also as forbidden by the Transportation Act."

There arises, therefore, the question, what, in the evidence before the Commission showed that the Florida intrastate rates resulted in a burden upon, or otherwise constituted, an unjust discrimination against interstate commerce?

The evidence before the Commission was directed to the situation in north Florida. This is recognized by the Commission in its report (R. 792) and by the District Court in its opinions (R. 50, 168). Indeed, in its first opinion the District Court expressly held, with respect to the proceedings before the Commission, that (R. 50):

> "Although the complaint covered the whole of Florida, the real contention, and the Commission's own action upon the interstate rates, were limited to that northern territory, and the evidence related only to it."

And accordingly, that Court there held in effect that the evidence before the Commission was probably not sufficient to support a "state-wide" order (R. 51).

The evidence before the Commission, as the Court will recognize, was of the character usually offered to prove undue prejudice and preference as between

specific persons, places, and commodities, in violation of Section 3. As summarized by the Court below in its consideration of the matter it included (R. 169), (a) evidence of the cost of the intrastate service in Florida; (b) comparisons of the rates on logs intrastate within Florida with log rates elsewhere; and (c) comparisons of the rates on logs intrastate within Florida with rates on other low-grade commodities. There was a showing of the gross revenues derived by the defendant from the transportation of logs over its entire system throughout the southeastern states for one month (R. 287). This, it was explained, of course included "the revenue which the Atlantic Coast Line derived from the transportation of logs under the so-called Cummer (*i. e.*, the Florida intrastate) scale." But specifically as to the latter, the witness presenting this statement said (R. 514, 515):

> "We have no figures to segregate one special movement from any other part of the general movement of logs. So far as the amount of revenue is concerned, under the train load movements under the Cummer scale, I cannot estimate it. Of course I do know that the movement under these log contracts in every-day train movements is a very large movement of logs. As to whether it constitutes a very large proportion of the total revenues derived by the Atlantic Coast Line Railroad for the transportation of logs throughout its whole system, I would have to prepare statistics to say. I would not try to estimate it."

The complainant before the Commission, as shown elsewhere herein, not only disavowed any attempt to make the proceeding "a revenue case," but also prayed for the application of the Florida intrastate scale to interstate traffic, Florida to Georgia.

There was, therefore, no evidence before the Commission of a revenue burden, such as was definitely shown to exist in the *Wisconsin* and *New York cases.* The Commission's report says nothing about any burden upon interstate commerce. The lower Court, however, found that the intrastate rates were "on the face of things * * * too low, and likely to burden the carrier". (R. 169.) To reach this conclusion that Court evidently exercised its own judgment upon the evidence before the Commission. This it had no right to do. Furthermore, as appellants believe is amply demonstrated herein under Point II., there was no substantial evidence before the Commission to prove that the intrastate Florida scale of rates was, as the Commission put it, "less than reasonably compensatory" (R. 798), or, as the Court below put it, "obviously unremunerative" (R. 169).

In conclusion upon this point, therefore, appellants respectfully submit that there was before the Commission no evidence that the Florida intrastate rates constituted a burden upon or unjust discrimination against interstate commerce. Such evidence as there was otherwise, even if persuasive of particular instances of undue prejudice and preference as between intrastate and interstate traffic in logs (which we deny) could not sustain the broad sweep of the order "within and throughout the entire state of Florida, without exception."

Point V.

THE INTERSTATE COMMERCE COMMISSION, IN CONDEMNING EXISTING RATES AND IN FIXING RATES FOR THE FUTURE, IS NOT AUTHORIZED OR EMPOWERED TO "SUPPLEMENT" THE FACTS SHOWN OF RECORD BEFORE IT, OR TO RELY UPON "THE COMMON KNOWLEDGE AND SKILL IN RATE MATTERS THAT THE INTERSTATE COMMERCE COMMISSION, THE GEORGIA AND FLORIDA STATE COMMISSIONS, AND THE RAILROADS MUST HAVE IN SUCH MATTERS."

(This is applicable to Assignments of Error XXI. and XXII.)

Commenting upon the fact that the parties before the Commission were interested mostly in, and the great bulk of the evidence before the Commission related to, north Florida, the Court below said (R. 168-169):

> "* * * but in addition to the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions, and the railroads must have in such matters, there was a presentation in the evidence by the Coast Line and by the Florida Commission, respectively, of the cost of service under the attacked rate and of its remunerativeness. Certainly no other litigant could have known the facts better than they. In rejecting the conclusion of slight net income asserted by the witnesses, the Commission did not rule out the basic facts shown, but was at liberty to supplement them and construe them for itself, and make its own conclusion from them." *State of Florida v. United States*, 31 F. (2d) 580, 582.

Then, after referring to certain rate comparisons considered by the Commission, the District Court reached the conclusion that (R. 169):

> "We cannot say the order is without evidence to sustain it, on the ground that the former state rate was an undue discrimination against general interstate commerce over the Coast Line Railroads."

In this understanding of the law your appellants respectfully submit the Court below was entirely in error. There is, of course, high authority to the effect that a tribunal such as the Interstate Commerce Commission, expert in matters of rate regulation, may be presumed to be able to draw inferences that are not obvious to others. *O'Keefe v. United States*, 240 U. S. 294, 303. But, as the context of that decision shows, the inferences which the Commission may be presumed to be able to draw, must be drawn from the evidence before it. This is clearly to be deduced from the decisions of this Court in *Interstate Commerce Com. v. Louisville & N. R. Co.*, 227 U. S. 88, and *United States v. Abilene & S. R. Co.* (the *Orient Divisions Case*), 265 U. S. 274. In the first of these cases this Court said:

> "But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless." *Interstate Commerce Com. v. Louisville & N. R. Co., supra*, page 91.

In the *Orient Divisions case*, pp. 287, 288, this Court said:

> "The contention of the Commission is that, because its able examiner gave notice that 'no doubt it will be necessary to refer to the annual re-

ports of all these carriers,' its Rules of Practice permitted matter in the reports to be used as freely as if the data had been formally introduced in evidence.

"The mere admission by an administrative tribunal of matter which, under the rules of evidence applicable to judicial proceedings, would be deemed incompetent, does not invalidate its order. (citing cases) But a finding without evidence is beyond the power of the Commission. Papers in the Commission's files are not always evidence in a case. (citing cases) Nothing can be treated as evidence which is not introduced as such."

Relying upon the authorities thus quoted, appellants say that the Court below made a most serious error in attempting to justify the order of the Commission on any theory that while the facts before the Commission were not sufficient to justify the order, the Commission might first "supplement" those facts, and second, apply its "common knowledge" thereto, or with such common knowledge, to further supplement the facts of record before it. That is precisely what the Commission attempted to do in the *Orient Divisions case, supra,* and it was for just that reason that the order of the Commission was there condemned.

It is difficult to understand exactly what the Court below meant in its suggestion that the Interstate Commerce Commission could rely upon the common knowledge and skill of the Georgia and Florida State Commissions and the railroads. For the fact is that the Georgia Commission, relying upon its skill, did its utmost in the proceedings before the Interstate Commerce Commission to prove that the rates which the Interstate Commerce Commission should make effective for the in-

terstate transportation of logs from Florida to Georgia should be the Florida intrastate scale of rates which the Interstate Commerce Commission subsequently condemned. Apparently, therefore, there was no reliance by the Interstate Commerce Commission upon any particular common knowledge or skill possessed by the Georgia Commission. Again, the Florida Commission supported the Florida intrastate rates in the proceedings before the Interstate Commerce Commission and offered voluminous expert evidence designed to show, as we believe that evidence did show, that the Florida intrastate rates on logs were remunerative rates. But this product of the common knowledge and skill of the Florida Commission was entirely disregarded by the Interstate Commerce Commission.

Beyond this your appellants deny that the Interstate Commerce Commission is entitled to rely upon any common knowledge or skill of the railroads. Whatever knowledge, and whatever skill the railroads may possess in the matter of rate-making must be demonstrated not only to the satisfaction of the Interstate Commerce Commission, but in such manner that adversaries before the Commission may have opportunity to test that common knowledge and skill of the railroads. This implies, on the authority of the cases cited under this point, that such common knowledge and skill as the railroads possess in matters of rate-making must be displayed as evidence before the Interstate Commerce Commission and subjected to the usual right of cross-examination by adversary parties. This, appellants think, was not appreciated by the Court below.

Concluding on this point, appellants submit that to the extent that the Commission had to "supplement"

the record before it, and rely upon "common knowledge" of facts as justification for its order, that order was unlawful and void.

Point VI.

THE INTERSTATE COMMERCE COMMISSION WAS WITHOUT POWER TO REGULATE AND FIX THE INTRASTATE RATES FOR TRANSPORTATION OF LOGS WHOLLY WITHIN THE STATE OF FLORIDA BECAUSE SAID RATES WERE VOLUNTARILY INITIATED AND MAINTAINED IN EFFECT BY THE CARRIER AND WERE NOT RATES MADE OR IMPOSED BY AUTHORITY OF ANY STATE" WITHIN THE DESCRIPTION OF SECTION 13 (3) AND (4) OF THE INTERSTATE COMMERCE ACT.

(This is applicable to Assignments of Error X. and XV.)

The law under which the Interstate Commerce Commission must act in fixing intrastate rates within and throughout the confines of any one state is found specifically in Section 13 (3) and (4) of the Interstate Commerce Act. In paragraph (4) it is provided that:—

> "Whenever, in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the

> classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination."

The reference in paragraph (4) to "any such investigation" relates back and refers to the language of paragraph (3), which reads:—

> "Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. * * *."

Your appellants respectfully submit that the purpose of these two paragraphs of Section 13 would seem to be entirely clear, and to require that any state-wide adjustment of intrastate rates by the Interstate Commerce Commission should be undertaken only when demonstrated to be necessary to prevent unjust discrimination against interstate commerce, and *only* after the state itself had first sat in judgment on the issue of the lawfulness of those intrastate rates.

This view seems to be recognized by the Commission itself in some of the State rate cases which have come before it. Thus, in a case which arose shortly after the passage of Transportation Act, 1920, the Commission said:—

> "Prior to June 1, 1917, the scales were single line and rates over two or more lines were constructed on combination. On that date the State commission ordered that for joint-line application 1 cent per 100 pounds should be added to the rate prescribed for the continuous mileage. The carriers published these rates under protest. No attack is made by complainant on the increases resulting from General Order No. 28 of the Director General of Railroads." *Walsh Fire Clay Products Co. v. Director General,* 73 I. C. C. 410, 411.

This recital of the history of the rates there under review, we think, was sufficient to demonstrate that the intrastate rates involved fell within the description of paragraphs (3) and (4) of Section 13, and therefore were properly the subject of review by the federal regulatory authority. In *Rates on Powder and High Explosives,* 151 I. C. C. 155, the Commission had under consideration rates applicable within the State of Arizona. The report of the Commission recites (pp. 156-157):—

> "The carriers asserted at the hearing that they had exhausted their efforts in appealing to the Arizona Commission for relief before filing their petition here and they strenuously objected to the Arizona commission participating cooperatively with us in these proceedings on the ground that it amounts to that commission sitting in judgment upon its own order. While the Arizona commission did not reopen the proceedings in which the Arizona intrastate rates here complained of by the carriers were prescribed, it did, prior to the hearing herein, as above stated, institute another investigation on its own motion into the Arizona intrastate rate situation. Under all the circumstances it would seem that the joint hearing was within the purview of paragraph 3 of section 13 of the interstate commerce act."

Here, again, was a recital by the Commission of the historical facts surrounding the rates involved, showing that they were rates "imposed by authority" of a state, and to the conclusion that they were properly within the purview of paragraph 3 of Section 13.

A very recent decision of the Commission, *Rates on Chert, Clay, Sand, and Gravel,* 160 I. C. C. 309, decided December 9, 1929, is of particular significance in this connection because it is a subsequent decision in a case, the earlier decision of which was particularly relied upon by the Commission to support its order under review herein. It appears that in the earlier case, *Rates on Chert, Clay, Sand, and Gravel,* 122 I. C. C. 133, the Commission had under construction, *inter alia,* the intrastate rates on those commodities within the State of Georgia. With respect to such rates the Commission there said (pp. 169-170):—

> "There is of course no transportation reason for the maintenance of a different basis of intrastate rates on these commodities within Georgia than that herein found reasonable for interstate transportation. However, in view of the attitude taken by the Georgia commission in the past which we have above adverted to we do not now deem it necessary to make any finding or enter any order in No. 17517 for the future in so far as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia Commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved."

Apparently, the subsequent action of the Georgia Commission did not produce that "harmony with the interstate adjustment" which the Interstate Commis-

sion deemed necessary. The Interstate Commission therefore proceeded to further hearing in the matter of rates on chert, clay, sand, and gravel within the State of Georgia. Preliminary to its reconsideration of the rates in issue on their merits, the Commission then said (160 I. C. C. 309, 313):—

> "It is urged, on behalf of the Georgia Commission and other Georgia interests, that we are without jurisdiction to here enter an affirmative order because of the limited scope of the order reopening these cases for further hearing. It is contended that the proceedings should have been reopened also for the purpose of determining a reasonable basis of interstate rates.
>
> As heretofore stated, the 17517 scales were recently prescribed in these proceedings for interstate application after an exhaustive investigation and are now applied on interstate traffic throughout the greater part of southern territory. The only reason that no findings were made for the future or order entered in the original proceedings concerning the Georgia intrastate rates was because this commission, desirous of fostering and encouraging the spirit of cooperation between it and the State Commissions, 'felt that the Georgia commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved.' The Georgia Commission has authorized a revision. Respondents and others complained and are here contending that this intrastate revision is so out of harmony with the approved interstate revision that it has brought about an unlawful relationship. For the purpose of determining whether or not this is the fact, the proceedings were reopened and the further hearing had."

Here, again, is action by the Interstate Commerce Commission which seems to indicate the recognition on its part that it should attempt a state-wide adjustment of intrastate rates only after the state regulatory body itself has first sat in judgment on the lawfulness of those rates. In fact, the Interstate Commission here expressly postponed any action on the State rates, pending review thereof by the State Commission.

In the log case, here before this Court, the hearings before the Commission developed that the Florida Commission had issued no order respecting these rates. This was the expression of the traffic official who appeared on behalf of the Atlantic Coast Line, the defendant before the Commission, as its witness (Perrin, R. 494). Mr. Perrin further expressly recognied that in this proceeding neither the Florida nor the Georgia intrastate rates should be determined for the future (R. 496). At the very conclusion of the hearing before the Interstate Commerce Commission, it appeared that the Atlantic Coast Line had been invited for a period of six years to make any showing to the Florida Railroad Commission that the rate in Florida on logs was unreasonable, and that in the absence of such showing Chairman Wells of that Commission had concluded that the rate was reasonable. (R. 726-727.) Thus it is to be observed that the railroad which maintained in effect the rates which were under attack not only did not bring them in issue before the Commission, but defended their propriety when they were by others brought in issue before the Commission, and admitted they never had been fixed by the Florida State Commission.

The peculiar, and, indeed, the ironical phase of the situation is that the Florida intrastate rates were

brought in issue before the Federal commission by the Georgia authorities,—the same authorities to which deference was shown by the Interstate Commerce Commission when it refrained from establishing rates on chert, clay, sand and gravel within the State of Georgia, on the theory (mistaken, as it afterwards appeared) that the Georgia Commission would cooperate in authorizing such revisions as might be necessary "to bring their rates into harmony with the interstate adjustment." No such deference or consideration, despite the requirements of the statute, was shown to the State of Florida by the Interstate Commission in the proceeding here under review.

Note: The decided cases bearing upon this Point VI are very few. For this reason, and because "a practical interpretation of the law by the administrative body having its enforcement in charge * * * is entitled to weight," see *Boston & M. R. Co. v. Hooker*, 233 U. S. 97, 118, we take the liberty of referring to the brief recently filed by the Interstate Commerce Commission in this Court in support of its Petition for Writ of Certiorari in No. 768 of the October Term, 1929. Therein, in extended discussions of Section 13 (3) and (4) the Commission uses the phrase "state-made rates" time and again, apparently as synonymous with the words of the statute "made or imposed by authority of any state."

Point VII.

THE ORDER OF THE INTERSTATE COMMERCE COMMISSION CONSTITUTED AN ACT IN CONTRAVENTION OF THE CONSTITUTION OF THE UNITED STATES.

(This is applicable to Assignments of Error II, XII., and XIX.)

In the first decision of the Court below, (speaking of the provisions of paragraphs (3) and (4) of Section 13), the Court said: (R. 46.)

> "No attack has been made before us upon the constitutionality of the enactment. Such an attack would probably be sufficiently met by what

was said in the suit of *Wisconsin Railroad Commission v. C. B. & Q. R. R. Co.*, 257 U. S. 563."

This reference to the *Wisconsin case, supra,* doubtless is to those portions of this Court's opinion found therein at pages 589-590.

But administrative action or power may be so used or abused as to invade Constitutional rights and as to violate Constitutional guaranties so as to entitle the State or the citizen to invoke the shield of the Constitution for its or his protection. See *Interstate Commerce Com. v. Illinois C. R. Co.*, 215 U. S. 452, 470. This point was raised by the original bill as well as by the supplemental bill, and was insisted upon throughout in the Court below (Original Bill, Para. 22, 23 (R. 884); Supplemental Bill, Para. XVI, Subdivisions F and G, (R. 924)).

The only authority under which the Interstate Commerce Commission could have issued the order which it did issue would have to be found in the existence of a state-wide unjust discrimination against interstate commerce by virtue of the intrastate rates which the Federal Commission condemned. This condemnation, as we believe has been amply shown in this brief elsewhere, was without justification of evidence. Such being the case, the action of the Commission was beyond the statute, and unconstitutional. It is unnecessary to cite authorities to support such a proposition beyond the case last cited.

Point VIII.

THE DISTRICT COURT, IN ORDER TO UPHOLD THE JURISDICTION AND ORDER OF THE INTERSTATE COMMERCE COMMISSION, RELIED UPON THE COURT'S OWN CONCLUSION WITH RESPECT TO THE PROPRIETY OF THE RATES IN CONTROVERSY, AND IN SO DOING EXERCISED ADMINISTRATIVE POWER NOT POSSESSED BY SAID COURT.

(This is applicable to Assignment of Error XXIII.)

It is to be borne in mind that when the District Court first considered the order of the Interstate Commerce Commission and the proceedings before that Commission which led up to the issue of that order it reached the conclusion that the order could not be sustained in its state-wide scope because (*State of Florida v. United States*, 30 F. (2d) 116, 120):

> "Although the complaint covered the whole of Florida, the real contention, and the Commission's own action upon the interstate rates, were limited to that northern territory, and the evidence related only to it." (R. 50.)

In its second consideration of the Commission's order the District Court again reached the conclusion that it could not be sustained in its state-wide scope (R. 168):

> "because of undue prejudice to shippers and localities, or because of undue discrimination against the *particular* interstate commerce in such logs." *State of Florida v. United States*, 31 F. (2d) 580, 581.

Its further consideration of the matter on the second occasion, however, led the Court to the conclusion that

the Commission's order must also be considered as possibly justifiable to remove a discrimination against what the Court termed "general" interstate commerce, as when the discrimination is such as to throw an undue burden upon interstate commerce.

When the second decision of the Court below is studied in detail it will be observed that in determining whether or not there was a discrimination against *general* interstate commerce, the District Court commenced with a repetition of its previous finding that:

> "* * * The parties appeared interested mostly in north Florida because of prejudice to shipments there, and the great bulk of the evidence related thereto * * *." (R. 168.)

Next, the Court considered, (1) the evidence which was before the Commission to show the cost of transportation on the Florida intrastate rates on logs, and, (2) the rate comparisons which were also before the Commission. From this consideration it was concluded that (R. 169):

> "On the face of things the log rate is too low and likely to burden the carrier."

This conclusion, appellants respectfully submit, is not couched in the language of a reviewing Court, but rather, is the expression that might be expected of an administrative body considering the merits of the controversy before it. The District Court had no authority to consider the merits of that controversy. *Loomis v. Lehigh Valley R. Co.*, 240 U. S. 48-50. Its function was limited by the decisions of this Court to questions of constitutionality, to questions of statutory power, and

to whether the Interstate Commerce Commission had acted reasonably or arbitrarily. *Interstate Commerce Com. v. Illinois C. R. Co.*, 215 U. S. 452, 470; *Interstate Commerce Com. v. Chicago, R. I. & P. R. Co.*, 218 U. S. 88, 110; *Kansas City S. R. Co. v. United States*, 231 U. S. 423, 439-440. Specifically, with respect to the evidence before the Interstate Commerce Commission, the function of the District Court was merely to determine whether or not there was substantial evidence to support the findings upon which the Commission based its order. *Interstate Com. Com. v. Union P. R. Co.*, 222 U. S. 541, 547.

The mere fact that a particular rate or schedule of rates if lower, and even considerably lower than other rates is not of itself conclusive; it does not justify a finding that "on the face of things" the lower rate is too low. Other facts must be taken into consideration, not, to be sure, by the Court, but by the rate regulating body. Circumstances and conditions surrounding the transportation upon all the rates compared must be shown and weighed, and differentiation of rates according to those circumstances and conditions might well justify the view that the lower rate is by no means too low. *Louisville & N. R. Co., v. United States*, 238 U. S. 1, 15-16; *Virginian R. Co. v. United States*, 272 U. S. 658, 666.

But the District Court also commented upon the fact that the Commission expressly found that the log rate was obviously unremunerative. We have already shown, we believe, that the Commission was without evidence to support such a finding. But even if the finding were warranted, it does not necessarily follow that an unremunerative rate casts a burden upon interstate commerce of such consequence as to de-

mand the raising of all of the rates on that commodity within and throughout the entire state without exception. The Commission so found with respect to the relatively lower rates on the intrastate Florida transportation of fertilizer. *Florida Fertilizer case, supra.*

Moreover, it is to be observed that the District Court did not merely proceed to adjudge a finding of the Interstate Commerce Commission that the log rates constituted a burden upon interstate commerce; the Interstate Commerce Commission made no such finding, and as elsewhere shown herein, had before it no evidence upon which such a finding could have been made. What the District Court did was to step again beyond its proper sphere and to find, not that there was substantial evidence showing a burden upon interstate commerce, but that the state rates condemned by the Interstate Commerce Commission would be "likely to burden the carrier." (R. 169.) This was beyond its province, and moreover the Court does not say that *a burden upon interstate commerce did exist.*

To conclude, therefore, on this point, your appellants respectfully submit that in finally determining that the order of the Interstate Commerce Commission could be supported on a state-wide basis, the District Court did not content itself with reviewing the action of the Commission, but usurped the functions of an administrative body, and undertook upon its own understanding of the evidence before that body, to make its own conclusions of fact for the purpose of supporting the order already made. This the District Court was without power to do.

Point IX.

THE DISTRICT COURT SHOULD HAVE GRANTED THE RELIEF PRAYED FOR IN THE BILL AND IN THE SUPPLEMENTAL BILL AND SHOULD HAVE PERMANENTLY ENJOINED THE ORDER OF THE INTERSTATE COMMERCE COMMISSION.

(This is applicable to Assignments of Error I. and XXVII.)

Now, as was the case prior to Transportation Act, 1920, there is embraced in the Interstate Commerce Act, Section 1 (2), the proviso that that Act, "shall not apply—(a) To the transportation of * * * property, or to the receiving, delivering, storage, or handling of property, wholly within one state * * *." This exclusion of intrastate commerce from the federal scheme of regulation is commented upon by this Court in the *Wisconsin case, supra,* page 588, and it was there stated that:—

> "Commerce is a unit and does not regard state lines, and while, under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet when they are so mingled together that the supreme authority, the nation, cannot exercise complete, effective control over interstate commerce, without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority or a violation of the proviso."

As this brief has heretofore shown, logs are a natural resource of the States, and log transportation is essentially short-haul and overwhelmingly intrastate in character. These attributes, we submit, makes

log traffic peculiarly a traffic with respect to which the sovereign rights of the individual states should remain paramount, if that be at all possible. They should not be invaded, as a mere incident of the federal power to regulate interstate commerce, except for excellent cause. No such cause appears in this proceeding.

Consider the sequence of events which led to the condemnation of the Florida intrastate rates on logs by the Interstate Commerce Commission and the substitution by it therefor of much higher rates.

The State of Georgia was the complainant before the Interstate Commerce Commission. It made no attack on the Florida intrastate rates. Nor did the Atlantic Coast Line Railroad Company, the defendant before the Interstate Commerce Commission, attack those rates. They had not been attacked before the Florida Commission. The parties before the Interstate Commerce Commission sought the continued effectiveness of those intrastate rates, and the complainant contended that they should be extended for interstate application.

The Interstate Commerce Commission, by the order here in issue, greatly increased the rates on logs "within and throughout the entire State of Florida, without exception." This it did even though the record before it showed that lower rates on logs were contemporaneously effective on the intrastate traffic of Georgia (the complainant state), of South Carolina, and of North Carolina. (*Ante*, p. 37). As justification for its action greatly increasing the Florida intrastate rates on logs, the Interstate Commerce Commission relied in part upon its own action in fixing rates on road building materials, which rates, how-

ever, it expressly refrained from making applicable to intrastate commerce within Georgia until the Georgia Commission should have first acted with respect thereto. *Rates on Chert, Clay, Sand and Gravel,* 122 I. C. C. 133, 169-170; 160 I. C. C. 309, 313; *ante,* pp. 79-80.

Again, contemporaneously with its action increasing the Florida intrastate rates on logs, the Interstate Commerce Commission considered and declined to increase the Florida intrastate rates on fertilizer materials, although these, like the log rates, were considerably lower than were the interstate rates on the same fertilizer materials. *Florida Fertilizer Case,* 151 I. C. C. 602, *ante,* pp. 48-49.

The amendments written into the Interstate Commerce Act by Transportation Act, 1920, sought to preserve comity between the states, and between the states and the federal government, in the matter of rate rgulation. The Act recognizes that conflicts may arise, and that regulation of state commerce by the federal agency may be necessary as an incident of proper federal regulation of interstate commerce. This Honorable Court, in *Lawrence v. St. Louis-San Francisco Ry. Co., supra,* points all this out, with the admonition that "it is important that the federal power be not exerted unnecessarily, hastily, or harshly."

Your appellants respectfully submit that the action of the Interstate Commerce Commission in greatly increasing the rates on logs, one of the few natural resources of Florida, within and throughout that entire state, without exception, and with no saving clause to preserve the sovereign rights of the State of Florida with respect to such purely intrastate commerce in the future was unnecessary, hasty, and harsh. It afforded no opportunity whatever for the State of Florida to

act for itself. It left no opportunity for the State of Florida to act in the future; change in the Florida intrastate rates on logs is forbidden by the order of the Interstate Commerce Commission, which requires that the rates promulgated in its order shall be established, put in force, *and maintained* within and throughout the entire state of Florida, without exception; change in that order by the Interstate Commerce Commission must be made ere any change in the intrastate rates can be made. (R. 801.)

The Interstate Commerce Commission has general inquisitorial powers. It may proceed on its own motion to an investigation of any matter concerning which complaint may be made to it. When the varying levels in intrastate rates on logs in the southeast came to its attention the Interstate Commerce Commission could have proceeded to an investigation of the entire subject in the manner that the statute contemplates. It could have avoided singling out for federal action the log rates of Florida, against the level of which *no one* complained.

Again, to preserve comity in the matter of rate regulation, the Interstate Commerce Commission might have, and indeed should have, accorded to the sovereign State of Florida as respects log rates, the courtesy accorded by it to the sovereign State of Georgia as respects rates on road building materials. It might, in other words, have afforded to the Florida authorities the opportunity to "harmonize" the Florida intrastate log rates with the interstate log rates just as it afforded to the Georgia authorities the opportunity to harmonize the rates within Georgia on road building materials.

And, again, the Interstate Commerce Commission,

your appellants believe, should have afforded to the intrastate shippers of logs within Florida the same courtesy and consideration which were accorded to the intrastate shippers of fertilizer materials within the state. The Court will observe from the report of the Commission in the *Florida Fertilizer case, supra,* that the state rates there were considerably lower, as is the case with the state log rates, than the interstate rates. But even so, the Interstate Commerce Commission did not reach into the confines of Florida and raise all the rates on fertilizer for intrastate transportation within and throughout that state without exception. It chose instead, to be guided by the evidence there before it, and recognized that increasing the intrastate rates might, indeed, destroy the traffic and thus produce the result which this Court in the *Wisconsin case, supra,* page 591, expressly indicated must be guarded against. There is in the record before the Interstate Commerce Commission in the log case the same kind of evidence as was offered in the *Fertilizer case* to prove that increasing the state rates in the manner in which the Commission did increase them would but destroy the traffic and thus really burden interstate commerce. There was, indeed, no substantial evidence to the contrary, and as shown above, *ante,* pp. 43-44, it is mathematically demontrable that there could be no evidence to the contrary, for inevitably the rates fixed by the Interstate Commerce Commission must destroy the log traffic.

For these reasons, and for the reasons already shown in the argument herein under Points I. to VIII., inclusive, your appellants respectfully submit that the District Court should have granted the relief prayed for in the Bill and in the Supplemental Bill and should

have permanently enjoined the order of the Interstate Commerce Commission.

Respectfully submitted,

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April 9, 1930.

APPENDIX.

STATUTES RELIED UPON.

The Interstate Commerce Act, (41 Stat. L., 474):

Section 1:

"(1) That the provisions of this Act shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

(c) The transmission of intelligence by wire or wireless;—

from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation or transmission takes place within the United States.

(2) The provisions of this Act shall also apply to such transportation of passengers and property

and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid;

(b) To the transmission of intelligence by wire or wireless wholly within one State and not transmitted to or from a foreign country from or to any place in the United States, as aforesaid; or

(c) To the transportation of passengers or property by a carrier by water where such transportation would not be subject to the provisions **of this Act except** for the fact that such carrier absorbs, out of its port-to-port water rates or out of its proportional through rates, any switching, terminal, lighterage, car rental, trackage, handling, or other charges by a rail carrier for services within the switching, drayage, lighterage, or corporate limits of a port terminal or district.

"(5) All charges made for any service rendered or to be rendered in the transportation of * * * property * * * **shall be just and reasonable, and every unjust and unreasonable charge** for such service or any part thereof is prohibited and declared to be unlawful."

Section 2:

"That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by

any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

Section 3:

"(1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Section 13:

"(1) That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization,

or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matter complained of in such manner and by such means as it shall deem proper.

(2) * * * The Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though

it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders of the payment of money.

(3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding."

Section 15:

"(1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged or collected, by any

common carrier or carriers subject to this Act for the transportation of * * * property * * * as defined in the first section of this Act, * * * is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged * * * and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect, any rate, fare or charge, for such transportation * * * other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be * * *."

Section 15a:

"(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management, and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as

nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. Provided, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust and unreasonable, and to prescribe different rates for different sections of the country."

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: *Provided,* That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account.

(4) For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to

time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value.

(5) Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States.

(6) If, under the provisions of this section, any carrier, receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. For the purposes of this paragraph the value of the railway property and the net railway operating income of a group of carriers, which the Commission find are under common control and management and are operated as a single system, shall be computed for the system as a whole, irrespective of the separate ownership and accounting returns of the various parts of such system. In the case of any carrier which has accepted the provisions of section 209 of this amendatory Act the provisions of this paragraph shall not be applicable to the income for any period prior to September 1, 1920. The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4)."

The District Court Jurisdiction Act (C. 32, 38 Stat. L., 219):

"The Commerce Court, created and established by the Act entitled 'An Act to create a Commerce

Court and to amend the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes,' approved June eighteenth, nineteen hundred and ten, is abolished from and after December thirty-first, nineteen hundred and thirteen, and the jurisdiction vested in said Commerce Court by said Act is transferred to and vested in the several district courts of the United States, and all Acts or parts of Acts in so far as they relate to the establishment of the Commerce Court are repealed. Nothing herein contained shall be deemed to affect the tenure of any of the judges now acting as circuit judges by appointment * * *.

The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation, or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the Commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment, the term "destination' shall be construed as meaning final destination of such shipment.

The procedure in the district courts in respect to cases of which jurisdiction is conferred upon them by this Act shall be the same as that heretofore prevailing in the Commerce Court. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States; and the right of appeal from the district courts in such cases shall be the same as the right of appeal heretofore prevailing under existing law from the Commerce Court. No interlocutory injunction suspending or restraining the enforcement, operations, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit; *Provided,* That in cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three

judges, concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said Commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. A final judgment or decree of the

district court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such case the notice required shall be served upon the defendants in the case and upon the attorney general of the state.

The Commerce Court Act (C. 309, 36 Stat. L., 539):

"SEC. 1. That a court of the United States is hereby created which shall be known as the Commerce Court and shall have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section

twenty-three of the Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

Nothing contained in this Act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the Commerce Court.

The jurisdiction of the Commerce Court over cases of the foregoing classes shall be exclusive; but this Act shall not affect the jurisdiction now possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes."

"Sec. 211. All cases and proceedings in the Commerce Court which but for this chapter would be brought by or against the Interstate Commerce Commission, shall be brought by or against the United States, and the United States may intervene in any case or proceeding in the Commerce Court whenever, though it has not been made a party, public interests are involved."

"Sec. 212. The Attorney General shall have charge and control of the interests of the Government in all cases and proceedings in the Commerce Court, and in the Supreme Court of the United States upon appeal from the Commerce Court; if in his opinion the public interest requires it, he may retain and employ in the name of the United States, within the appropriations from time to time made by the Congress for such purposes, such special attorneys and counselors

at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and the Attorney General shall stipulate with such special attorneys and counsel the amount of their compensation, which shall not be in excess of the sums appropriated therefor by Congress for such purposes, and shall have supervision of their action: *Provided,* that the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice and speed the determination of such suit: *Provided, further,* That communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by anyone under the terms of this chapter, or the Acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof, and the Attorney General shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor

aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or non-action of the Attorney General of the United States therein.

"Sec. 213. Complainants before the Interstate Commerce Commission interested in a case shall have the right to appear and be made parties to the case and be represented before the courts by counsel and under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States."

Act of February 13, 1925 (C. 229, 43 Stat. L. 936).

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That sections 128, 129, 237, 238, 239, and 240 of the Judicial Code as now existing be, and they are severally, amended and re-enacted to read as follows:

* * * * *

"Sec. 238. A direct review by the Supreme Court of an interlocutory or final judgment or decree of a district court may be had where it is so provided in the following Acts or parts of Acts, and not otherwise:

* * * * *

(4) So much of 'An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year 1913, and for other purposes,' approved October 22, 1913, as relates to the review

of interlocutory and final judgments and decrees in suits to enforce, suspend, or set aside orders of the Interstate Commerce Commission other than for the payment of money."

Act of January 31, 1928 (C. 14, 45 Stat. L. 54).

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,* That the writ of error in cases civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.

"Sec. 2. That in all cases where an appeal may be taken as of right it shall be taken by serving upon the adverse party or his attorney of record, and by filing in the office of the clerk with whom the order appealed from is entered, a written notice to the effect that the appellant appeals from the judgment or order or from a specified part thereof. No petition of appeal or allowance of an appeal shall be required; *Provided, however,* That the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such courts."

Act of April 26, 1928 (C. 440, 45 Stat. L. 466).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of an Act entitled "An Act in reference to writs of error," approved January 31, 1928, Public, Numbered 10, Seventieth Congress, be, and it is hereby, amended to read as follows:

"Sec. 2. The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

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DEC 24
CHARLES ELMO

IN THE

Supreme Court of the United States

No. [illegible] / 8

WILSON LUMBER COMPANY OF FLORIDA,
Appellant,

vs.

UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION.

STATEMENT AS TO JURISDICTION ON APPEAL.

J. V. NORMAN,
Solicitor for Appellant.

December 14, 1929.

WESTERFIELD-BONTE COMPANY, INCORPORATED, LOUISVILLE, KY.

IN THE

Supreme Court of the United States

No. 495.

WILSON LUMBER COMPANY OF FLORIDA,
Appellant,

vs.

UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION.

STATEMENT AS TO JURISDICTION ON APPEAL.

A.

STATUTORY PROVISIONS SUSTAINING JURISDICTION.

The statutes relied upon by appellant are:

Section 238 of the Judicial Code as amended by the Act of Congress of February 13, 1925 (c. 229, 43 Stat. 938); and the Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 219, 220).

B.

DATE OF DECREE AND DATE OF APPLICATION FOR APPEAL.

The final decree appealed from was dated April 17, 1929, and entered April 22, 1929 (Record, page 1462).* Appellant's notice of appeal was dated June 6, 1929, and was presented on that day (Record, page 1464), and the order granting said appeal was dated June 6, 1929, and was filed June 19, 1929 (Record, page 1471). Proof of service of notice of said appeal to the Attorney General of the State of Georgia was filed June 20, 1929 (Record, page 234). Proof of service of notice of said appeal to the Georgia Public Service Commission and the Atlantic Coast Line Railroad Company was filed June 20, 1929 (Record, page 1473). Proof of service of notice of said appeal to the United States and the Interstate Commerce Commission was filed June 20, 1929 (Record, page 1485).

C.

NATURE OF THE CASE AND RULINGS BELOW.

The suit was brought (Record, page 1360) to enjoin, set aside and annul so much of an order of the Interstate Commerce Commission (Record, page 1381),

*All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the District Court of the United States for the Northern District of Georgia, Atlanta Division, and on file with the Clerk of this Court. The record has not been printed.

dated and entered August 1, 1928 (and subsequently amended and clarified by orders of the Interstate Commerce Commission dated February 5 and February 7, 1929, Record, page 1456), in a proceeding before the Interstate Commerce Commission, entitled Docket No. 18364, *Georgia Public Service Commission,* Complainant, v. *Atlantic Coast Line Railroad Company,* Defendant, reported in 146 I. C. C. 717 (Record, page 1370), as required the Atlantic Coast Line Railroad Company to establish and put in force in intrastate commerce, within and throughout the entire State of Florida without exception, certain rates on logs which were, in the same order, fixed as reasonable, between certain points in northern Florida (only) and points in Georgia in interstate commerce.

Circuit Judge Walker and District Judges Dawkins and Sibley, who sat in the specially constituted District Court, concurred in a unanimous opinion filed January 17, 1929 (State of Florida v. U. S., 30 Fed. (2) 116, Record, page 1407), and afterwards said District Court, so constituted, by its order granted a rehearing and allowed the appellant to file a Supplemental Bill (Record, page 1436), and afterwards, upon said rehearing, the said Judges comprising said District Court concurred in a unanimous opinion filed on March 22, 1929 (*Id.* 31 Fed. (2) 580; Record, page 1458), and on April 22, 1929, entered the Final Decree, dated April 17, 1929, by which said Court, for the reasons stated in said last described opinion, denied the

relief sought and dismissed the Bill and Supplemental Bill (Record, page 1462).

D.

CASES BELIEVED TO SUSTAIN JURISDICTION.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

Baltimore & Ohio R. R. Co. v. U. S., 277 U. S. 291;
Id. 279 U. S. 781;
St. L. & O'Fallon R. R. v. U. S. and I. C. C., 279 U. S. 461.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of the statutory provisions hereinabove set forth.

Respectfully submitted,

J. V. NORMAN,
Solicitor for Appellant.
Inter-Southern Building,
Louisville, Ky.

Dated December 14, 1929.

Service of copy of the foregoing statement as to Jurisdiction on Appeal is hereby acknowledged this ——— day of December, A. D., 1929.

For United States of America, Appellee.

Solicitor for Interstate Commerce Commission, Intervening Appellee.

Solicitor for Atlantic Coast Line Railroad, Intervening Appellee.

Solicitor for Georgia Public Service Commission, Intervening Appellee.

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Supreme Court, U. S.
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CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1929.

No. ~~425~~ 18

WILSON LUMBER COMPANY OF FLORIDA, - Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., - - Appellees.

Appeal from the District Court of the United States for the Northern District of Georgia.

BRIEF ON BEHALF OF THE WILSON LUMBER COMPANY OF FLORIDA, APPELLANT.

J. V. NORMAN,
Counsel for Wilson Lumber Company, Appellant.

WESTERFIELD-BONTE COMPANY, INCORPORATED, LOUISVILLE, KY.

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Supreme Court of the United States

OCTOBER TERM, 1929.

No. 495.

WILSON LUMBER COMPANY OF FLORIDA, - *Appellant,*

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., - - *Appellees.*

Appeal from the District Court of the United States for the Northern District of Georgia.

BRIEF ON BEHALF OF THE WILSON LUMBER COMPANY OF FLORIDA, APPELLANT.

REFERENCE TO THE OFFICIAL REPORT OF THE OPINIONS DELIVERED IN THE COURT BELOW.

The opinions in the Court below are reported in 30 Fed. (2) 116, and 31 Fed. (2) 580, and will also be found in the record at pages 44 and 167. The opinion of the Interstate Commerce Commission is reported in 146 I. C. C. 717, and will also be found in the record at page 790.

STATEMENT AS TO JURISDICTION.

On January 27, 1930, the Court announced its finding that probable jurisdiction had been shown by statement filed by appellants on December 2, 1929, and served upon all opposing counsel wherein jurisdiction was assailed. This being a proceeding to enjoin an order of the Interstate Commerce Commission jurisdiction is conferred by the District Court Jurisdiction Act, 38 Stat. L. 219.

STATEMENT OF THE CASE.

This case comes to the Supreme Court on appeal from an order of the United States District Court for the Northern District of Georgia, sitting as a specially constituted Three Judge Court under the provisions of the District Court Jurisdiction Act, 38 Stat. L. 219, denying an injunction restraining the enforcement of an order issued by the Interstate Commerce Commission in Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, Docket No. 18364, and dismissing the bill seeking such injunction.

Two other cases were heard by the Court below jointly with this case, wherein it was also contended that the same order of the Interstate Commerce Commission was unlawful, and should be enjoined, and the opinions of the District Court on original hearing (R. 44), and upon rehearing (R. 167), disposed of all three cases and similar individual decrees were entered by the District Court in all three proceedings. Complain-

ants below in the other two cases, are now before this Court with their individual appeals, being No. 493, State of Florida and E. S. Wells, E. S. Matthews, *et al*, appellants, v. United States, Interstate Commerce Commission, *et al*, appellees, and No. 494, Brooks Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, appellants v. United States, Interstate Commerce Commission, *et al*, appellees, and these three cases are presented on a common record.

The case before the Interstate Commerce Commission had its inception by the filing of a complaint with it by the Georgia Public Service Commission, on behalf of the Georgia shippers and receivers, alleging that the interstate rates charged and received by the defendant, Atlantic Coast Line Railroad Company, on logs, except walnut, cherry, and cedar, in carloads, from Florida points to points in Georgia, were unjust and unreasonable, and that the charging and receiving of greater compensation for the transportation of logs moving in interstate commerce from Florida and Georgia than was charged and received for the transportation of like property moving in intrastate commerce within the State of Florida, unjustly and unlawfully discriminated against the Georgia log shippers, and gave undue preference and advantage to Florida intrastate log shippers and that the intrastate Florida rates voluntarily established by the defendant, Atlantic Coast Line Railroad, gave an undue and unreasonable preference and advantage to intrastate shippers in Florida and "are unduly prejudicial and

disadvantageous to the interstate shipper in Georgia, and causes undue and unreasonable and unjust discrimination against interstate commerce, in violation of Section 13 of the Interstate Commerce Act" (R. 193).

The Atlantic Coast Line answered denying that its interstate rates were unjust or unreasonable or that it was responsible for any discrimination and praying that the complaint be dismissed (R. 199).

Numerous persons and corporations were permitted to intervene and thereafter the Commission held hearings at which evidence was introduced and the case was briefed and argued by counsel. On August 2, 1928, the Commission rendered its opinion (R. 790), and entered its order (R. 800). In its opinion the Commission found:

> "While complainant assails the rates from all points on defendant's lines in Florida to all points on its line in Georgia, the record shows that in so far as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry, and cedar, from that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, hereinafter referred to as North Florida, to destinations in Georgia for distances not exceeding 170 miles" (R. 792).

The Commission held that the interstate rates from Florida points to Georgia destinations, for said distances of 170 miles, unreasonable and fixed a scale of

rates to be thereafter charged. These interstate rates were made effective in accordance with the order of the Commission, without objection from any one, and are not involved in this proceeding.

The Commission further found, as follows:

> "We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce" (R. 799).

Pursuant to this finding the Commission, by its order, directed the defendant to maintain rates "in intrastate commerce within the State of Florida which shall be the same as those prescribed in the next preceding paragraph hereof, as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia" (R. 801). It is this order requiring the increase of Florida intrastate rates which appellants seek to enjoin.

The appellant, Wilson Lumber Company, whose plant is located in Central Florida and who draws its logs from Central and Southern Florida, had not up to this time been a party to the proceeding as it did not understand that its rates were involved. Upon obtaining information that the order of the Commission

was subject to a construction which would increase the rates paid by it, Wilson Lumber Company filed with the Interstate Commerce Commission its petition for leave to intervene and for reconsideration and reargument. Other interveners filed petitions for rehearing which, together with the petition of this appellant, were overruled.

The appellant thereupon instituted this action as complainant in the Court below, seeking to enjoin the order of the Commission. The Court below, in its opinion (R. 44), stated the main questions presented by the complaint, as follows:

> "The contentions of invalidity make these main questions: 1. Is the order within the lawful powers of the Commission? 2. Is it within the issues sought to be investigated and made after full hearing of them? 3. Is it arbitrary because unsupported by sufficient evidence? 4. The State of Florida and Wilson Lumber Company, construing the order as abrogating the Coast Line's intrastate log rates throughout the State of Florida rather than within the limited territory for which new interstate rates were fixed, make the special and newly raised contention of an entire want of evidence to support so broad an order."

It was urged upon the Court below that the order was void, among other reasons, because, being statewide in scope, it was unjustified according to the rulings in *Wisconsin Railroad Commission* v. *C. B. & Q. R. R.*, 257 U. S. 563, and *Illinois Central* v. *Utilities Commission of Illinois*, 245 U. S. 493, since those

cases held that a statewide increase in rates may not result from a finding by the Commission of discrimination against persons and localities at border points. The Court considered these contentions at length and disposed of them as follows (R. 50):

> "A more troublesome question is that raised by the State of Florida and Wilson Lumber Corporation (paragraph 18e of the one bill and paragraphs 7 and 10 of the other) that the evidence, and the findings of the Commission, related only to north Florida, while the order complained of fixed intrastate rates for the whole of Florida, and was unjustified according to the rulings in Wisconsin R. R. Com. v. C. B. & Q. R. R., 257 U. S. 563, and Illinois Central R. R. Co. v. Public Utilities Comm. of Ill., 245 U. S. 493. From a cursory search of the record it appears to be true that the evidence, though often broadly phrased, really related to the logs in north Florida, a territory described by the Commission in its order establishing new intrastate rates as north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs. No interest, apparently, was taken by any one in the territory more remote from the Georgia line, evidently because the class of logs involved could, under no circumstances, be profitably moved so great a distance. Although the complaint covered the whole of Florida, the real contention, and the Commission's own action upon the interstate rates, were limited to that northern territory, and the evidence related only to it. The precise condition in south Florida, and whether there could or would be any interstate commerce in

logs from that region, were never investigated. The language of the order passed touching the intrastate rates can be construed as fixing rates for the whole state. The two bills above referred to so construe it. The respondents in answering the bill of the State of Florida seem to deny this construction. The answers to the bill of Wilson Lumber Company vary. Those of the Interstate Commerce Commission and Georgia Public Service Corporation do not commit themselves to any construction, but leave the order to speak for itself. We think it can also be construed as limited to points of origin on the Coast Line railroad north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs. The existence and availability of logs at such origins was fully investigated and at others not. The Commission confined its order on interstate rates expressly to these origins, and dealt with the intrastate rates only by reference to the order fixing the interstate rates, declaring that the rates 'in intrastate commerce within the State of Florida shall be the same as those prescribed in the next preceding paragraph hereof as reasonable for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia. The preceding paragraph fixes only one-way rates, and was limited to origins on the Coast Line railroad in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs. The destinations in Georgia there referred to were, of course, excluded by the words 'within Florida' in the order as to intrastate rates. Otherwise the intrastate rates were to be the same.

> Since the first construction would probably nullify the order, we think we should follow the established rules in construing contracts and statutes, holding to the latter construction which would uphold it. Territorial indefiniteness of the order was held aided by the other proceedings in American Express Co. v. Caldwell, 244 U. S. 617."

The Court thereupon denied the injunction and dismissed the bill. The order of the Commission as thus construed by the District Court was, by its terms, to become effective on February 8, 1929. The Atlantic Coast Line Railroad, in disregard of the interpretation of the Commission's order by the District Court, proceeded to publish the prescribed schedule of rates for application throughout the State of Florida. Litigation ensued in both State and Federal Courts, which it is not necessary to here describe, the purpose of which was to require the Atlantic Coast Line Railroad to confine the application of the increased rates to the territory to which the Court below had confined the application of the order in its opinion. While this litigation was pending and one day before the effective date of its order, to-wit, February 7, 1929, the Interstate Commerce Commission entered an order (R. 912), providing that its said order of August 2, 1928,

> "be, and it is hereby changed in language for the purpose of clarification as follows: In the fourth paragraph of said order of August 2, 1928, substitute for 'within the State of Florida,' the following: 'within and throughout the entire State of Florida, without exception.'"

Thereupon appellants applied for a rehearing (R. 985), before the Court below and filed amended and supplemental bills (R. 987) setting forth the amendment made in its order by the Interstate Commerce Commission and seeking an injunction against the order as thus amended. The Court granted the rehearing (R. 1000), and reconsidered the matter because (R. 167):

> "The ambiguity which we formerly found in the order of the Commission is now removed and the intent made clear that the intrastate log rate in question is to be changed over the entire Coast Line system in Florida. * * * We have therefore to examine the record more closely and see if a statewide change of the rate is sustainable."

The Court affirmed its holding that a Statewide order could not be sustained because of discrimination against shippers and localities in interstate commerce, saying (R. 168):

> "No such case is, therefore, shown by the evidence as to justify a statewide order altering the intrastate rate because of undue prejudice to shippers and localities, or because of undue discrimination against the particular interstate commerce in such logs."

After so holding, the Court took up the question of discrimination against general interstate commerce, saying (R. 168):

> "There is, however, another discrimination against general interstate commerce when one

> state rate or the system of state rates is so low as to throw an undue burden on the revenues arising from interstate commerce in order to sustain the carrier engaged in both kinds of commerce."

The Court then proceeded to hold that the proceeding before the Commission had presented this question and further held that there was sufficient evidence to sustain the finding of the Commission, saying (R. 168):

> "Upon the hearings, it is true that the parties appeared interested mostly in North Florida because of prejudice to shipments there, and the great bulk of the evidence related thereto, but in addition to the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions and the railroads must have in such matters, there was a presentation in the evidence by the Coast Line and by the Florida Commission respectively, of the cost of service under the attacked rate and of its remunerativeness. Certainly no other litigant could have known the facts better than they. In rejecting the conclusion of slight net income asserted by the witnesses, the Commission did not rule out the basic facts shown, but was at liberty to supplement them and construe them for itself, and make its own conclusion from them."

The Court therefore entered an order denying the injunction and dismissing the bill and the case is here on appeal from that order (R. 1013).

SPECIFICATION OF ERRORS (R. 1015).

The assignments of error here relied upon for the reversal of the court below are as follows:

The District Court erred:

I.

In denying the relief prayed and dismissing the bill and the supplemental bill.

II.

In holding that the order of the Interstate Commerce Commission, of August 2, 1928, as amended on February 7, 1929, was within the lawful powers of the Commission.

III.

In holding that said order of the Interstate Commerce Commission was within the issues sought to be investigated.

IV.

In holding that said report and order of the Interstate Commerce Commission was made after a full hearing of the questions determined in the report and upon which the order was predicated.

V.

In holding that said order of the Commission was supported by sufficient evidence and was not arbitrary.

VI.

In holding that the said order of the Interstate Commerce Commission did not constitute an unlawful invasion of the rights and powers of the State of Florida reserved to it by the Constitution of the United States.

VII.

In holding that the Interstate Commerce Commission "was at liberty to supplement" the facts shown.

VIII.

In holding that the Commission was justified "in rejecting the inclusion of slight net income" asserted by the witnesses and predicating said holding upon the right of the Commission to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions, and the Railroads must have in such matters."

IX.

In holding that the Interstate Commerce Commission is vested with authority to condemn an intrastate rate charged by a single railroad on a single commodity on the ground that such rate discriminates against general interstate commerce which it is held that there is no discrimination against particular interstate commerce or against shippers and localities in interstate commerce.

X.

In failing and refusing to find that the issue as to whether the lower level of the Florida intrastate log rates of the Atlantic Coast Line Railroad cause or would cause unjust discrimination against interstate commerce in violation of Section 13 when construed with Section 15a of the Interstate Commerce Act, was eliminated from the proceeding before the Commission by the parties thereto.

XI.

In failing and refusing to find that there was no substantial evidence before the Interstate Commerce Commission supporting or tending to support the finding by the Commission that the continued maintenance by the Atlantic Coast Line Railroad of the Florida intrastate log rates would subject interstate commerce to unjust discrimination in violation of Sections 13 and 15a of the Interstate Commerce Act.

XII.

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because there was no substantial evidence to support the finding that the Florida intrastate log rates of the Atlantic Coast Line Railroad were less than reasonably compensatory.

XIII.

In failing and refusing to find that there was no substantial evidence of record before the Interstate Commerce Commission showing or tending to show that substantially similar circumstances and conditions surrounded the transportation of logs by railroad on the one hand over the Atlantic Coast Line Railroad Company between points in Florida and on the other hand from origins on its line in Florida to destinations in Georgia.

XIV.

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because they seek to interfere with the voluntary continuance of the Florida intrastate rates on logs over its line by the Atlantic Coast Line Railroad Company without any substantial evidence showing or tending to show that the continuance of such Florida intrastate log rates in any way violates the provisions of the Interstate Commerce Act, and without any request or petition by said Atlantic Coast Line Railroad Company to either the Interstate Commerce Commission or to the Florida Railroad Commission to increase such Florida intrastate log rates, and without any other effort whatsoever by said Atlantic Coast Line Railroad Company to increase said rates.

XV.

In failing and refusing to find that the intrastate rates, investigated by the Interstate Commerce Commission, were not those contemplated by Section 13 (4) of the Interstate Commerce Act, as amended, because same were voluntarily initiated and maintained by the carrier, and therefore not "made or imposed by authority of any State," within the description of Section 13 (3) of said Act.

XVI.

In failing and refusing to find that the report and order of the Interstate Commerce Commission are unlawful because the facts of record before the Commission do not show that there is or would be any real or substantial injury to or restriction upon interstate commerce as a consequence of the continued maintenance of the Florida intrastate log rates of the Atlantic Coast Line Railroad Company.

XVII.

In failing and refusing to hold that Section 13 of the Interstate Commerce Act is in violation of the Constitution of the United States, and especially the Tenth Amendment thereto, if same be construed to vest in the Interstate Commerce Commission the powers here asserted.

XVIII.

In failing and refusing to find that the report and order of the Interstate Commerce Commission as

amended are unlawful because there were no facts of record in such proceeding before the Interstate Commerce Commission showing, or tending to show, nor did the Interstate Commerce Commission find any facts sufficient to constitute, unjust discrimination against interstate commerce in violation of the provisions of Section 13 of the Interstate Commerce Act.

XIX.

In failing and refusing to find that the report and order of the Interstate Commerce Commission as amended are unlawful because said Commission has thereby sought to embrace within the scope thereof all rates of the Atlantic Coast Line Railroad Company on logs between any stations on its line wholly within the State of Florida for any length of haul not exceeding 170 miles and in any portion of such state, although there was no case or controversy submitted to that tribunal or pending before it involving in any way freight rates of the Atlantic Coast Line Railroad Company on logs within Florida, except for hauls of 170 miles and less over such railroad wholly within the so-called Northern portion of the State of Florida.

XX.

In failing and refusing to hold that the proceeding before the Commission was essentially a proceeding instituted in behalf of Georgia shippers to properly relate the rates on logs from a restricted territory in Northern Florida to points in the State of Georgia with the rates on logs in the said restricted territory

in Northern Florida and did not present nor could not present the question that the rates on logs throughout Florida constituted an undue discrimination against general interstate commerce or put an undue burden on the revenues arising from interstate commerce and accruing to the carriers subject to the Interstate Commerce Act and that, therefore, the Commission was without power to make the order complained of.

SUMMARY OF ARGUMENT.

The points raised by the appellant in the bill of complaint before the Court below, and urged here as reasons why the order of the Commission should be enjoined as null and void, are:

I.

The order of the Commission, being state wide in scope, cannot be sustained under the Commission's power, granted by Section 3 of the Act, to remove undue prejudice and preference as between particular persons, places and commodities.

II.

The question as to whether all Florida log rates charged by the Atlantic Coast Line Railroad were so low as to constitute discrimination against interstate commerce generally, was not submitted to the Commission or tried by it in the proceeding before it.

III.

The Court below erred in holding that the Interstate Commerce Commission was at liberty "to supplement"

the facts shown, and to rely upon "the common knowledge and skill in rate matters that the Interstate Commerce Commission, The Georgia & Florida State Commissions and the Railroad Commission must have in such matters."

IV.

The intrastate rates for transportation of logs wholly within the State of Florida were not rates "made or imposed by authority of any State" within the description of Section 13 (4) of the Interstate Commerce Act and the Interstate Commerce Commission is therefore without power to regulate and fix said rates.

V.

The order of the Interstate Commerce Commission was made without sufficient evidence to support its finding that the Florida interstate log rates discriminate against interstate commerce as a whole.

VI.

It is not sufficient that a finding of the Interstate Commerce Commission that intrastate rates discriminate against interstate commerce be supported by substantial evidence only, as in cases involving interstate rates, but such finding must be in accord with the preponderance of the evidence.

VII.

The order of the Interstate Commerce Commission constitutes an Act in contravention of The Constitution of The United States.

VIII.

The action of the Interstate Commerce Commission under the circumstances of this case constitute an unwarranted exercise of Federal power and unnecessary, hasty and harsh interference with the power of the State.

ARGUMENT.

I.

The Order of the Commission, Being State Wide in Scope, Cannot be Sustained under the Commission's Power, Granted by Section 3 of the Act, to Remove Undue Prejudice and Preference as Between Particular Persons, Places and Commodities.

The Court below in both of its opinions herein correctly held that the Commission had no power to order an increase in all of the Florida rates because of undue prejudice to shippers and localities or because of undue discrimination against the particular interstate commerce. In as much as no exception was taken by any of the defendants below to this finding of the District Court and there is no appeal from such finding, we take it that this question is judicially settled. However, in the event that it should be urged in this Court that the Commission's order may be sustained under the powers granted by Section 3 of the Act to remove discrimination against persons and localities and particular commerce, we desire to briefly review the situation with reference thereto.

The Commission in its report (R. 792), says:

"While complainant assails the rates from all points on defendants'-lines in Florida to all points on its line in Georgia, the record shows that in so far as the interstate rates are concerned relief is desired only with respect to rates on logs, except walnut, cherry, and cedar, from that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs, hereinafter referred to as North Florida, to destinations in Georgia for distances not exceeding 170 miles."

An examination of the evidence supports the finding of the lower Court, that (R. 50):

"Although the complaint covered the whole of Florida, the real contention, and the Commission's own action upon the interstate rates were limited to that northern territory, and the evidence related only to it. The precise condition in South Florida, and whether there could or would be any interstate commerce in logs from that region, were never investigated."

This branch of the case comes squarely under the rule laid down by this Court in *Railroad Commission* v. *C. B. & Q. R. R.*, 257 U. S. 563, 66 L. ed. 371, to the effect that the Commission may not order an increase in all intrastate rates because of discrimination at border points. This Court there said (p. 579):

"The order in this case, however, is much wider than the others made in the proceedings following the Shreveport and Illinois C. R. Co. cases. There as here, the report of the Commis-

sion showed discrimination against persons and localities at border points, and the orders were extended to include all rates or fares from all points in the state to border points. But this order is not so restricted. It includes fares between all interior points, although neither may be near the border, and the fares between them may not work a discrimination against interstate travelers at all. Nothing in the precedents cited justifies an order affecting all rates of a general description when it is clear that this would include many rates not within the proper class or the reason of the order. In such a case, the saving clause by which exceptions are permitted cannot give the order validity. As said by this court in the Illinois Central Railroad case: 'It is obvious that an order of a subordinate agency, such as the commission, should not be given a precedence over a state rate statute, otherwise, valid, unless, and except so far as, it conforms to a high standard of certainty.' See also American Express Co. v. S. D., 244 U. S. 617, 627, 61 L. ed. 1352, 1359, P. U. R. 1917, F. 45, 37 Sup. Ct. Rep. 656."

We submit, therefore, that the state wide order of the Commission increasing Florida log rates, cannot be sustained on the ground that such rates constitute a discrimination against persons or localities or particular interstate commerce. We now come to consideration of the question as to whether the Commission in this proceeding had authority to order an increase in the log rates throughout the State of Florida, on the ground that same constitute discrimination

against interstate commerce generally and if it did have such power whether there is sufficient evidence to support the finding necessary to its exercise.

II.

The Question as to Whether all Florida Log Rates Charged by the Atlantic Coast Line Railroad were so Low as to Constitute Discrimination Against Interstate Commerce Generally, was not Submitted to the Commission or Tried by it in the Proceeding Before it, and the Order of the Interstate Commerce Commission being Based on a Finding Thereon was made Without the Full Hearing Required by the Interstate Commerce Act.

Proceedings before the Interstate Commerce Commission must be initiated in accordance with Section 13 of the Interstate Commerce Act. Under the provisions of subsection 1 of Section 13, complaints may be instituted by "any person, firm, corporation, company or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier." Subsection 2 authorizes complaints by a State Commission or the institution of an inquiry by the Interstate Commerce Commission on its own motion. Subsection 3 relates to rates "made or imposed by authority of any State" and provides that petition for investigation of such rates be filed by "the carrier concerned." This was an adversary proceeding and is what is known as a complaint and answer case,

as distinguished from an investigation instituted by the Commission, whether on its own motion or on petition of "the carrier concerned." It was therefore instituted under either Subsection 1 or 2 of Section 13 of the Interstate Commerce Act. It could not have been brought under subsection 3 because it is not an investigation initiated by the Commission and, as we shall hereafter see, the rates brought in issue were not "made or imposed by authority of any State." The object of the complaint was stated in paragraph 3, as follows (R. 193):

> "That the object of this complaint is to secure reasonable rates on logs from all points on the Atlantic Coast Line Railroad, as hereinafter shown within the State of Florida to all destinations on the said Atlantic Coast Line Railroad in the State of Georgia, and to have removed any unjust discrimination or undue prejudice found to exist as provided in the Interstate Commerce Act."

The complaint alleged (1) that the interstate rates on logs from shipping points in Florida to destinations in Georgia were unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act; (2) that such rates unjustly and unlawfully discriminate against Georgia log shippers in violation of Section 2; and (3) that the rate adjustment was unduly prejudicial and disadvantageous to Georgia interstate shippers, giving undue preference and advantage to intrastate Florida log shipers in violation of Section 3. These were the allegations upon which the complaint

was tried. It is true that in paragraph 11 of the complaint, after alleging that the rates for transportation of logs between points in Florida give undue and unreasonable preference and advantage to intrastate shippers in Florida and are unduly prejudicial and disadvantageous to the interstate shippers in Georgia, there is added the phrase—"and cause undue and unreasonable and unjust discrimination against interstate commerce in violation of Section 13 of the Interstate Commerce Act."

No evidence was offered by the complainant, however, to show that the Florida intrastate rates discriminated against interstate commerce because too low, in fact, no evidence was offered by complainants to show that the Florida intrastate rates were low, but, on the contrary, the complainants undertook to show that the discrimination against Georgia shippers should be removed by establishing the Florida intrastate scale for interstate application. The principal, and in fact the only, witness for complainant stated (R. 417):

> "I have not prepared any schedule of rates to suggest being used as a means to remove the discrimination against Georgia manufacturers, as shown in our exhibit but do suggest and contend that the rates now being operated in Florida be extended into Georgia for interstate application."

The Chairman of the Georgia Public Service Commission, who also acted as its counsel at the hearing before the Interstate Commerce Commission, confirmed

the statement made by his witness. He asked counsel for Florida interveners (R. 420):

> "Are you opposed or not to the extension of the Florida rates under review here, being extended into Georgia?"

and then stated (R. 421):

> "It certainly is a very vital, relevant matter, and it seems to me Mr. Cotterill ought to be able to answer now, because that is all there is in the case, it is all that has ever been in the case, it is all that has ever been in the case, it is all we are asking for and all we hope to gain."

It will thus be seen that the complainant not only did not charge that the Florida intrastate rates were so low as to cast a burden on interstate commerce, but, on the contrary, insisted upon the use of such Florida intrastate rates as a yard-stick for the establishment of interstate rates. It was the relation of rates to which the complainant directed its attack and it insisted that the existing Florida intrastate rates should be used as the basis for establishment of a proper relationship. The only evidence bearing upon the question of the remunerativeness of the Florida intrastate rates was offered by the defendant, Atlantic Coast Line Railroad, and the interveners, Florida Railroad Commission. The Atlantic Coast Line Railroad offered such evidence for the purpose of establishing that the Florida intrastate rates, while remunerative (R. 526, 695) under the conditions under which the Florida traffic

was handled, which is largely in trainloads, were not sufficiently high for general application to traffic handled generally in single carload (R. 484, 504, 515). After this evidence was introduced the Florida Railroad Commission undertook to show by its accountant that the Florida intrastate rates produced a greater net revenue than had been shown by the Atlantic Coast Line R. R. (R. 629-641).

We therefore submit that a careful examination of the record discloses the fact that the question as to whether the intrastate rates were so low as to discriminate against interstate commerce generally was never tried in the proceeding before the Commission, yet it was upon a finding to this effect that the order of the Commission must find its justification. Accordingly there has been a total failure to afford the full hearing upon this question which the statute requires. In *I. C. C.* v. *L. & N.*, 227 U. S. 88, 91, this Court said:

> "In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, quasi-judicial in character, are void if a hearing was denied, if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence' (citing many cases), or if the facts found do not support the order made (citing cases)."

In the *New England Divisions Case*, 261 U. S. 184, 200, this Court further said:

"Whether a hearing was full must be determined by the character of the hearing, not by that of the order entered theeron."

Observing this principle and looking to the character of the hearing here had, it cannot be questioned that the hearing in this case was as to discrimination as between persons and localities in interstate commerce. True, appellant and other interveners could have introduced evidence to show that the intrastate rates did not discriminate against interstate commerce generally, but since the complainants introduced no evidence on the subject such parties had a right to rely upon no order being based on a finding thereof.

III.

The Court below Erred in Holding that the Interstate Commerce Commission was at Liberty "to Supplement" the Facts Shown, and to Rely upon, "the Common Knowledge and Skill in Rate Matters that the Interstate Commerce Commission, the Georgia & Florida State Commissions and the Railroad Commissions Must have in such Matters."

In its opinion the Court below states (R. 168-169):

"Upon the hearings, it is true that the parties appeared interested mostly in North Florida because of prejudice to shipments there, and the great bulk of the evidence related thereto, but in addition to the common knowledge and skill in rate matters that the Interstate Commerce Commission, the Georgia and Florida State Commissions

and the railroads must have in such matters, there was a presentation in the evidence by the Coast Line and by the Florida Commission respectively, of the cost of service under the attacked rate and of its remunerativeness. Certainly no other litigant could have known the facts better than they. In rejecting the conclusion of slight net income asserted by the witnesses, the Commission did not rule out the basic facts shown, but was at liberty to supplement them and construe them for itself and make its own conclusion from them."

This holding is in conflict with repeated decisions of this Court, holding that the Commission may not supplement the evidence before it by matters within its general knowledge or by papers in the Commission's files.

The case of *Interstate Commerce Commission* v. *L. & N.*, 227 U. S. 88, is perhaps the leading case on this subject. It was there insisted by the Government that the Interstate Commerce Commission, being an arm of Congress, was authorized to obtain such information as it considered necessary and to act on such information in making rates. The Court said (p. 93):

"The government further insists that the commerce act (26 Stat. at L. 743, chap. 128, U. S. Comp. Stat. 1901, p. 3163) requires the Commission to obtain information necessary to enable it to perform the duties and carry out the objects for which it was created; and having been given legislative power to make rates it can act, as could Congress, on such information, and therefore its findings must be presumed to have been supported by such

information, even though not formally proved at the hearing. But such a construction would nullify the right to a hearing—for manifestly there is no hearing when the party does not know what evidence is offered or considered, and is not given an opportunity to test, explain, or refute. The information gathered under the provisions of Section 12 may be used as basis for instituting prosecutions for violations of the law, and for many other purposes, but is not available, as such, in cases where the party is entitled to a hearing. The Commission is an administrative body and, even where it acts in a quasi judicial capacity, is not limited by the strict rules, as to the admissibility of evidence, which prevail in suits between private parties. Interstate Commerce Commission v. Baird, 194 U. S. 25, 48 L. ed. 860, 24 Sup. Ct. Rep. 563. But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted and defended. In such cases the Commissioners cannot act upon their own information, as could jurors in primitive days."

The rule thus announced has been ever since adhered to. Of course, this is not to say that the Commission may not use its special training and expert knowledge in rate matters in considering the evidence before it, but only that it may not supplement that evidence with such knowledge and information as it may have obtained from other sources. In *United States* v. *Abilene & S. R. Co.,* 265 U. S. 274, commonly known as the Orient Divisions Case, the Court set aside an order of the Commission because it appeared that the Com-

mission had considered annual reports of the carriers on file with the Commission but which had not been introduced in the record in the case before the Commission. The Court there said: "Nothing can be treated as evidence which is not introduced as such." See also the following cases:

U. S. v. Los Angeles & S. L. R. Co., 273 U. S. 299;
St. Louis & O'Fallon Ry. v. U. S., 279 U. S. 461, 493;
I. C. C. v. L. & N., 227 U. S. 88, on the point here discussed, was also cited with approval in
U. S. v. L. & N. R. Co., 235 U. S. 314, 321;
R. R. Co. v. Finn, 235 U. S. 601, 606;
Philadelphia & Reading Ry. Co. v. U. S., 240 U. S. 334;
Seaboard Air Line R. R. v. U. S., 254 U. S. 57, 62.

As we have already seen, the only evidence offered as to the remunerativeness of the intrastate rates showed that such rates were remunerative and the Court below referred to this fact and then stated (R. 169): "In rejecting the conclusion of slight net income asserted by the witnesses the Commission did not rule out the basic facts shown but was at liberty to supplement them and construe them for itself and make its own conclusion from them." Under authority of the foregoing cases this holding of the Court cannot be sustained. It therefore appears, and in the absence of the authority to supplement the evidence, it must be held, that there was no substantial evidence before the Commission to support a finding that the rates were unremunerative since all of the evidence offered showed the rates to be remunerative.

IV.

The Interstate Rates for Transportation of logs Wholly Within the State of Florida were not Rates "Made or Imposed by Authority of any State" Within the Description of Section 13 (4) of the Interstate Commerce Act and the Interstate Commerce Commission is Therefore Without Power to Regulate and Fix said Rates.

The Interstate Commerce Act contains no direct grant to the Interstate Commerce Commission of power to increase any intrastate rates on the ground that same constitute a burden on or discriminate against interstate commerce generally. This Court, however, in Wisconsin Rate Case, 257 U. S. 563, 586, held:

> "The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. Section 15a confers no power on the Commission to deal with the intrastate rates. What is done under that section is to be done by the Commission 'in the exercise of its powers to prescribe just and reasonable rates'; *i. e.,* powers derived from previous amendments to the Interstate Commerce Act, which have never been construed or used to embrace the prescribing of intrastate rates. When we turn to paragraph 4, section 13, however, and find the Commission for the first time vested with a direct power to remove 'any undue, unreasonable, or unjust discrimination against interstate or foreign commerce,' it is impossible to escape the dovetail rela-

tion between that provision and the purpose of section 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an 'undue, unreasonable, and unjust discrimination against interstate or foreign commerce,' within the ordinary meaning of those words."

Thus by reading Section 13, Subsection 4, together with Section 15a, and in order to carry out the purposes of the Act, the Commission obtains power to increase intrastate rates when, in a proper proceeding, such rates are found to discriminate against interstate commerce as a whole.

The Wisconsin case, however, as well as the companion case of *New York Passenger Fares,* 257 U. S. 591, were cases arising under Subsection 3 of Section 13, where the Commission, as a result of investigations instituted by itself pursuant to petition of the carriers, as provided in said section, found rates which had been fixed and imposed by State authority to be so low as to discriminate against interstate commerce as a whole. Moreover, each of said cases arose as a result of the refusal of State authority to permit intrastate rates to be subjected to the horizontal increases which the Interstate Commerce Commission, in the exercise of the duty laid upon it under Section 15a, had prescribed for all interstate rates. Here the intrastate rates, which the Commission orders increased, were not "made or imposed by authority of any State," nor has the Com-

mission ordered any general level for interstate log rates. The general increases prescribed by the Interstate Commerce Commission in its general orders under Section 15a, had been applied to the Florida intrastate log rates (R. 468, 472). The question, therefore, arises as to whether this Court will extend its interpretation so as to authorize the Interstate Commerce Commission, on the complaint of an interstate shipper, to increase a voluntarily maintained intrastate rate on a finding that such rate discriminates against interstate commerce as a whole. Subsections 3 and 4 were added to Section 13 by the Transportation Act of 1920. Subsection 3 reads in part as follows:

> "Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. * * *"

It is then provided by Subsection 4 that:

> "Whenever, in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and

interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination."

It will be seen that after Subsection 3 has provided for proceedings by the Commission where rates have been "made or imposed by authority of any State," Subsection 4 provides that "Whenever, *in any such investigation* the Commission after full hearing, etc." (Italics ours.) It is respectfully submitted, therefore, that Subsection 4, which impowers the Interstate Commerce Commission to prescribe intrastate rates so as to remove discrimination against interstate commerce, is confined to proceedings arising under Subsection 3, that the words in Subsection 4, "any such investigation," refer only to the investigation authorized by Subsection 3. This construction would leave to the State the primary right to prescribe intrastate rates and confer on the Federal Government the power to change those rates only after a finding that such rates discriminate against interstate commerce. Such a situation would give force and effect to the provision of the Interstate Commerce Act, which recognizes the right of the States to control in-

trastate rates. This Court has repeatedly held that the Interstate Commerce Commission's authority to control intrastate rates arises only where such control is necessary to the "efficient regulation of interstate commerce," and only when "there is a demonstrable injury and restraint upon interstate commerce which is real and substantial," Wisconsin case, *supra*.

B. & O. R. R. Co. v. I. C. C., 221 U. S. 612;
Southern R. R. v. U. S., 222 U. S. 20;
Mendon v. N. Y., N. H. & H. R. Co., 223 U. S. 1;
Houston, etc., R. Co. v. U. S., 234 U. S. 342;
Hammer v. Dagenhart, 247 U. S. 251;
Railroad Comm. v. C. B. & Q. R. Co., 257 U. S. 563;
Akron C. & Y. R. Co. v. U. S., 261 U. S. 184;
Dayton-Goose Creek Ry. Co. v. U. S., 263 U. S. 456;
Texas v. Eastern Texas R. Co., 258 U. S. 204;
Colorado v. U. S., 271 U. S. 153;
Arkansas Railroad Commission v. C. R. I. & P. R. Co., 274 U. S. 597.

It may be argued that in order to carry out the purpose of the Act it is necessary for the Interstate Commerce Commission to have the same power to order an increase in voluntarily maintained intrastate rates as the Court has held the Commission possesses as to rates that have been made or imposed by State authority. But aside from the improbability that the carriers will voluntarily maintain intrastate rates so low as to discriminate against interstate commerce, generally, the language of the statute would seem to vest power in the Interstate Commerce Commission only where the intrastate rates were "made or imposed by authority of

any State." It is elementary that the Commission has no powers except those expressly vested in it by statute, and giving to the words of the statute their ordinary meaning, the power to fix intrastate rates is vested only where rates made and fixed by State authority are found to discriminate against interstate commerce.

The Court below apparently held that because the Florida Commission had permitted the Florida intrastate rates voluntarily published by the carrier to become effective that the rates thereupon come within the class designated by Congress as "rates made or imposed by authority of any State." We submit that a rate initiated by the carrier and permitted by authority of a State is not a rate "made or imposed" within the intent of the statute. Obviously it was the purpose of the statute to give to the Interstate Commerce Commission power to increase rates only under such conditions as presented by the Wisconsin case and the New York Passenger Fare case, *supra,* where the State authority had fixed and imposed the rates and refused to permit them to be increased in accordance with the orders of the Interstate Commerce Commission prescribing the general level of rates necessary to carry out the purposes of Section 15a.

We therefore submit that the Florida intrastate log rates of the Atlantic Coast Line Railroad were not "made or imposed" by authority of the State of Florida, and that the Interstate Commerce Commission was without power to regulate and fix such rates until the State authority had acted thereon.

V.

The Order of the Interstate Commerce Commission was Made Without Sufficient Evidence to Support its Finding that the Florida Intrastate log Rates Discriminate Against Interstate Commerce as a Whole.

We have undertaken to show that the proceeding before the Commission was not such as is authorized by Subsection 4 of Section 13, and that the Commission did not try and determine the question as to whether the intrastate rates on logs throughout the State of Florida discriminate against interstate commerce as a whole. But even should it be held that the proceeding was such as is contemplated by Subsection 4, and that there was the full hearing which the statute contemplates, we submit that there is a total absence of substantial evidence to sustain a finding that the Florida intrastate log rates discriminate against interstate commerce as a whole.

In the Wisconsin case, *supra,* this Court held that the power of the Interstate Commerce Commission to regulate intrastate rates "should be directed to substantial disparity which operates as a real discrimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the State authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce." What evidence was there before the Commission of "real

discrimination against, and obstruction to, interstate commerce"? The Commission had fixed no "general level" of interstate rates on logs. We have already seen that there was no evidence showing or tending to show that the Florida intrastate log rates were unremunerative and therefore cast a burden on interstate commerce, in that interstate rates must be so high as to absorb a loss resulting from the intrastate rates. On the contrary, the only evidence in the record established that the intrastate rates produced a net profit.

As we have seen, the complainant offered no evidence to show that the intrastate rates were too low, but, on the contrary, sought to have their application extended to points in Georgia. Such evidence as does appear on whether the rates were remunerative, was in the nature of two cost studies, one offered by the Atlantic Coast Line Railroad to show that while the rates produced a net profit they were two low for general application and it showed a profit of only $1.34 per car (R. 796). The other was offered by the Florida Railroad Commission in an effort to show that the figures of the Atlantic Coast Line Railroad were incorrect and this study shows a net revenue of $5.85 per car (R. 797). Even this evidence was held by the Commission to be without value in showing the cost of transporting logs throughout Florida (R. 797) and therefore, in accordance with the Commission's holding, there was no evidence on the subject of whether the rates were remunerative.

(a) MERE DISPARITY IN RATES NOT SUFFICIENT TO ESTABLISH DISCRIMINATION AGAINST INTERSTATE COMMERCE AS A WHOLE.

Can it be said that particular intrastate rates on a given commodity, which do not discriminate against persons, localities, or particular traffic in interstate commerce and which produce a net profit to the carrier, discriminate against interstate commerce as a whole, within the purview of Subsection 4 of Section 13, because of a mere disparity between the intrastate rates and certain interstate rates on the same or other commodities where there is no showing as to revenue produced by either? It is conceivable in the absence of any showing as to whether the intrastate rate was remunerative, a comparison with other rates might afford some evidence from which the deduction might be made that same was not remunerative. In such case, however, there would necessarily have to be a showing that the rates with which comparison is made are applied under substantially similar circumstances and conditions.

The Court has repeatedly held that a mere disparity in rates is not alone sufficient to establish unreasonableness. In the case of *Smyth* v. *Ames,* 169 U. S. 466, the Court said that carriers are not necessarily bound to give the same rates to the people of all the States "for the kind and amount of business, and the cost thereof are factors which determine largely the question of rates and these vary in the several States. The volume of business in one State may be greater per mile, while

the cost of construction and maintenance is less. Hence, to enforce the same rates in both States might result in one (in) great injustice, while in the other it would only be reasonable and fair. Comparisons, therefore, between the rates of two States, are of little value, unless all of the elements that enter into the problem are presented."

There is no evidence in this record to establish the volume of traffic moving under the rates with which comparison is made nor the cost of construction and maintenance over roads operating such rates. In *L. & N.* v. *United States,* 238 U. S. 1, this Court dealt at length with the value of rate comparisons and pointed out that the mere comparison between rates does not necessarily tend to establish the reasonableness of either. The Court held, however, after allowing for dissimilarity in conditions which might exist on different roads the comparison of other rates might be taken as some evidence of the reasonableness of the rate in question. Here, however, it was not a question of the reasonableness of the Florida intrastate log rates because the rate-making power as to such rates was not vested in the Interstate Commerce Commission unless and until it could find that such rates constituted a substantial burden on interstate commerce. If the question were one of discrimination as between persons and localities, the disparity of rates would be substantial evidence thereof if a similarity of transportation conditions were shown because both rates might be reasonable and yet be discriminatory. *U. S.* v. *Illinois*

Central R. R. Co., 263 U. S. 515. While the Florida intrastate log rates were compared with certain other rates on logs and on other commodities, there was a total absence of evidence showing or tending to show similarity of conditions and circumstances of the transportation. On the contrary it was shown that the log traffic in Florida moved largely in trainloads (R. 472, 477, 493, 514, 797), whereas the traffic to which the rates apply that were compared with the Florida intrastate log rates, moves generally in single carloads (R. 493, 494). It is true that the Commission found that "whether the aforesaid rates pertained to transportation in interstate commerce or to transportation in intrastate commerce the transportation services in each instance are performed by defendant under substantially similar circumstances and conditions." We submit, however, that this finding was perfunctorily made and is not only without any support in the evidence, but is directly contrary to all the evidence. The evidence shows, without contradiction, that the transportation of logs in North Florida, the only portion of Florida as to which there was any evidence, is generally in trainloads (R. 472, 477, 514, 515, 797), whereas the transportation of logs to which the interstate rates, with which comparison was made, apply, is generally in single carloads (R. 493, 494). There was no evidence as to the transportation conditions under which logs were transported in central and south Florida and, in fact, as stated by both the Interstate Commerce

Commission and the Court below, the evidence was confined almost wholly to north Florida.

This situation presents a striking illustration of the wisdom of the rule that mere rate comparisons, without a showing as to transportation conditions, are not persuasive. There was a complete showing as to conditions of transportation service under the intrastate Florida rates applying in north Florida and it appeared that the movement was in trainloads over lines having practically no other traffic and could therefore be performed at minimum cost (R. 476, 515). The order of the Commission, however, requires the intrastate rates in central and south Florida to be increased because they burden interstate commerce and does so in the absence of any evidence as to the conditions of transportation and by mere comparison with certain other rates as to which there is likewise a total absence of evidence establishing the transportation conditions under which such rates apply.

It must be kept in mind that the power of the Interstate Commerce Commission to increase intrastate rates, in order to remove discrimination against interstate commerce as a whole, arises only by implication, by reason of the "dovetail relation" between Subsection 4 of Section 13 and Section 15a. As stated by the Court in the Wisconsin case, Section 15a in itself confers no power on the Commission to deal with the intrastate rates. It does, however, impose upon the Commission the duty "to initiate, modify, establish or adjust" rates "in the exercise of the power to prescribe

just and reasonable rates" so that "carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will * * * earn an aggregate net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carrier held for and used in the service of transportation." In other words, the duty of the Commission under Section 15a is to maintain the revenues of the carriers, and where necessary to performance of this duty it is authorized, by Subsection 4 of Section 13, to increase intrastate rates. The duty imposed being to maintain revenues, if intrastate rates are to be regulated by the Interstate Commerce Commission in performance of this duty they are to be regulated only for the purpose of maintaining revenues. The discrimination against interstate commerce as a whole, by an intrastate rate which can be removed by the Interstate Commerce Commission under those sections, must therefore be a discrimination against or burden upon the general revenue of the carriers. In this view of the matter a mere disparity of rates is not sufficient to establish the discrimination because the question is not one of rates but of revenues. Disparity in rates may establish discrimination as between persons, localities and particular traffic in interstate commerce, but we submit cannot establish discrimination as to carriers' revenue.

The Interstate Commerce Commission may establish interstate rates on a given commodity to and from

border points and may fix the intrastate rates to and from such border points to remove discrimination against persons and localities in interstate commerce. But we submit that in such a proceeding the Commission is without power to fix other rates within the State on the same commodity on the same level solely because of the disparity between such other rates and the rates fixed by it to and from border points.

(b) THERE WAS NO EVIDENCE BEFORE THE COMMISSION TO ESTABLISH THAT THE INCREASE IN THE FLORIDA LOG RATES WOULD RESULT IN INCREASED REVENUE.

If the Florida intrastate log rates are to be increased because they create a burden on interstate commerce it should only be done on a showing that the increased rates prescribed by the Interstate Commerce Commission will remove the burden by producing a greater revenue. It has long been recognized that often times a lower rate will produce a greater revenue than a higher one, because a rate low enough to move the traffic in volume, if it produced only slight net profit per unit of transportation, will result in greater net revenue than a higher rate on which a similar volume of traffic will move. This has been recognized by this Court, as well as the Interstate Commerce Commission. In the Wisconsin case, *supra,* this Court, after sustaining the order of the Interstate Commerce Commission requiring an increase in the Wisconsin intrastate passenger fares, said:

> "It may well turn out that the effect of a general order increasing all rates, like the one at bar,

> will, in particular localities, reduce income instead of increasing it, by discouraging patronage. Such cases would be within the saving clause of the order herein, and make proper an application to the Interstate Commerce Commission for appropriate exception."

There is no such saving clause in the order in this case as that referred to by the Court in the above quotation, but reference is here made to the language of the Court not for the purpose of calling attention to this omission but to call attention to the recognition by the Court that the increased rates might discourage traffic and hence reduce revenues.

The Interstate Commerce Commission has itself always recognized that reduced rates may result in increased revenue. It was upon this theory that the Commission ordered a general ten per cent reduction in rates in *Reduced Rates 1922,* 68 I. C. C. 676, although the carriers were shown at the time to be earning less than the amount fixed by the Commission as a fair return. The Commission there said (p. 732):

> "High rates do not necessarily mean high revenue for, if the public cannot or will not ship in normal volume, less revenue may result than from lower rates."

In the recent *Florida Fertilizer Case,* 151 I. C. C. 602, the Commission, in refusing to order an increase in the Florida intrastate rates on fertilizer, said:

> "Furtheremore, it is not certain that if the Florida intrastate rates were increased to the in-

terstate level, additional revenue would accrue to the carriers, for if the prophesies of the interior plants and of the Florida commission are justified, practically all shipments would be made from the ports with the result that the total charges would probably be no greater than they now are."

The same predictions were made by the Florida log shippers and the Florida Commission with reference to the log rates, that is that an increase in the rates would destroy the traffic and reduce the revenues therefrom (R. 422-424; 427-429; 431,433, 533, 527).

There is no possibility of reconciling the Commission's decision in the Fertilizer case, just referred to, and the case at Bar, but we realize that the mere fact that the finding of the Commission in the case under attack is inconsistent with its holding in other cases, is not sufficient to invalidate its order. However, the Fertilizer case does establish the recognition by the Commission of the fact that an increase in the rates may produce less revenue. In the instant case the Commission made no finding as to the probable movement of traffic on the increased rates but did refer to the fact that the Florida interests predicted that mills would have to be moved from the ports to the woods, which, of course, meant the loss of the log traffic to the Atlantic Coast Line Railroad. We therefore submit that the mere showing that the intrastate rates were lower than certain other rates is not sufficient evidence that such rates constitute a burden on interstate commerce.

VI.

It is not Sufficient that a Finding of the Interstate Commerce Commission that Intrastate Rates Discriminate Against Interstate Commerce be Supported by Substantial Evidence Only, as in Cases Involving Interstate Rates, but such Finding Must be in Accord with the Preponderance of the Evidence.

So far as we have been able to find this Court has not thus far been called upon to determine the character of evidence required to support a finding by the Interstate Commerce Commission that intrastate rates discriminate against interstate commerce. In the cases that have been before the Court the fact of discrimination has apparently been unquestioned or established by the overwhelming weight of the evidence and the questions contested have been with reference to the interpretation and application of the law.

In the Shreveport case, 234 U. S. 342, where the Court upheld the power of the Interstate Commerce Commission to fix intrastate rates in order to remove discrimination against persons and localities, it is said (p. 346):

> "It is undisputed that the difference was substantial, and injuriously affecting the commerce of Shreveport."

It will therefore be seen that there no question was raised as to the fact of discrimination, that fact being admitted. In the Wisconsin case, *supra,* it was shown without contradiction that the maintenance of the in-

trastate rates at 2 cents per mile would reduce the carriers' revenue $6,000,000 below what it would be under intrastate rates *on the general level prescribed for interstate rates* and both the Commission and the Court held that this constituted discrimination against interstate commerce. Here again there was apparently no question as to the facts, but the question was as to the power of the Commission. The same seems to have been true in the case of *New York* v. *United States,* 257 U. S. 592, where the evidence showed a difference in revenue of $12,000,000 under the intrastate rates from the revenue that would have accrued under *the level fixed by the Interstate Commerce Commission* for all interstate rates. This would appear, therefore, to be the first time that the Court has been directly called upon to determine the character of evidence necessary to sustain the finding of the Commission that intrastate rates discriminate against interstate commerce.

While the Court has not directly passed upon the question as to the character of evidence, it has indicated that the rule should be different from that which the Court has established for application to cases wherein the Interstate Commerce Commission has fixed interstate rates. In the last mentioned cases the Court has held that the determination of questions of facts is by law imposed upon the Commission and that the Court will review the testimony only to determine whether the findings of fact made by the Commission are supported by sufficient evidence to save

the Commission's finding thereof from being arbitrary action. In *I. C. C.* v. *U. P.*, 222 U. S. 541, the Court held (Syllabus No. 1):

> "The courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order."

Again in *Seaboard Air Line* v. *U. S.*, 254 U. S. 257, the Court said that the findings of fact upon questions within the jurisdiction of the Commission "can be disturbed by judicial decree only in cases where action is arbitrary or transcends legitimate bounds of their authority" (Citing cases).

While this Court has apparently not been called upon to determine the character of evidence required to support a finding by the Interstate Commerce Commission that intrastate rates or action discriminate against interstate commerce, yet the Court has used language which clearly indicates that where the jurisdiction of the State is to be ousted the evidence must be more convincing than is required where the Court is reviewing orders of the Interstate Commerce Commission fixing interstate rates. In the recent cases of *Railroad Commission of Wisconsin* v. *Maxey*, — U. S. —, decided March 12, 1930, this Court, in discussing the failure of the Court below to render an opinion, said:

> "* * * the respect due to the State demands that the need for nullifying the action of its legislature or of its executive officials be persuasively shown."

In the Wisconsin case, *supra,* it is also said that action of the Interstate Commerce Commission in changing state rates "should be directed to substantial disparity which operates as a real discrimination against, and obstruction to interstate commerce * * *." In other cases the Court has held that the intention of the Interstate Commerce Commission to interfere with the State function of regulating intrastate rates "is not to be presumed." *Arkansas R. R. Co.* v. *C. R. I. & P. Ry. Co.,* 274 U. S. 597.

In the Illinois Central Case, 245 U. S. 493, 510, this Court said that "it should never be held that Congress intends to supersede or suspend the exercise of reserved powers of a state, even where that may be done, unless, and except so far as its purpose to do so is clearly manifested (Cited Cases). This being true of an act of Congress, it is obvious that an order of a subordinate agency, such as the Commission, should not be given precedence over a State rate or statute otherwise valid, unless, and except so far as it conforms to a high standard of certainty."

It will thus be seen that this Court has held that before the Interstate Commerce Commission may supplant a State in controlling intrastate rates it must be "persuasively shown" that the State rates constitute "a real discrimination against, and obstruction to interstate commerce * * *." The reason for applying a different rule as to the character of evidence required to justify interference with intrastate rates from that applied where the Commission is fixing interstate

rates, would seem to be obvious. When dealing with interstate matters committed to its jurisdiction the Commission is acting as the agency of Congress in controlling matters which the Constitution expressly commits to the Federal Government. The Commission is therefore, in such cases, acting as an administrative body and its findings can only be set aside when they are so wanting in support by any substantial evidence as to constitute arbitrary action. When the Interstate Commerce Commission comes to deal with intrastate rates, however, it is exercising a jurisdiction which depends upon the fact of discrimination against or burden upon interstate commerce and in such case we submit that its action must be supported by the preponderance of evidence. We find much support for this view in the concurring opinion of Circuit Judge Batts, in the case of *Eastern Texas Railroad Company, et al.*, v. *Railroad Commission of Texas, et al.*, 242 Fed. 300-307, where it is said:

> "The Supreme Court has held that the Commission may determine what is a reasonable interstate rate, and what rate must be charged on intrastate business to prevent a discrimination when both rates are in use. But the authority of the Interstate Commerce Commission with reference to intrastate rates is purely incidental and remedial. The qualities of such an order are radically different from those of an order resulting from the exercise of the legislative function involved in rate-making. To hold that it may, under any circumstances, regulate a state rate, is to carry the rules

if interpretation to the extreme limit, in view of the proviso in the first section of the Interstate Commerce Act (Act Feb. 4, 1887, c. 104, 24 Stat. 379, Comp. St. 1916, 8563). It may be held that it has the power to make such orders affecting intrastate rates as are necessary to prevent discrimination; certainly, the authority will not go beyond the necessity. When the Interstate Commerce Commission acts with reference to such a matter, it makes, or should make, the same character of investigation and the same character of determination that would be made by a court if a carrier charging the intrastate and the interstate rates were prosecuted for a violation of the Interstate Commerce Commission Act. Its action would be more nearly judicial than legislative. Whenever such an order is under consideration by a court, the court would have to determine whether the jurisdiction of the Interstate Commerce Commission had been exceeded; and it would doubtless decline to apply the same rule with reference to the conclusiveness of the action of the Interstate Commerce Commission that obtains when that body is, in the exercise of its established legislative authority, making rates. It would not permit the Interstate Commerce Commission to conclusively determine its jurisdiction by determining the fact of the discrimination upon which its jurisdiction would depend."

We submit that the foregoing states the correct rule and that the action of the Interstate Commerce Commission in finding the fact of discrimination against interstate commerce by intrastate rates is "more near-

ly judicial than legislative," and that "the same rule with reference to the conclusiveness of the action of the Interstate Commerce Commission that obtains when that body is, in the exercise of its established legislative authority, making rates" should not be applied.

In fixing interstate rates the Commission is exercising a legislative function, while in determining the facts necessary to its jurisdiction over intrastate rates, it is performing a judicial function and the courts will review the facts to determine the question of jurisdiction and such determination by either the Commission or the Court, like any other judicial determination, should be supported by a preponderance of the evidence.

The power of the Interstate Commerce Commission to fix intrastate rates because same cast a burden upon or discriminate against interstate commerce generally is found only by construction and implication. It involves an invasion of the powers otherwise reserved to the States. We submit that only in a clear case of necessity should such power be sustained by this Court and that it should not be sustained where the finding as to discrimination is supported by only such evidence as prevents same from being arbitrary. On the contrary, protection of the rights of the States require that they should be divested of control over their domestic rates only where the Court finds a preponderance of evidence establishes a clear necessity for such action in order to protect interstate commerce. There can be no question that the finding of the Commission here fails to

find support by a preponderance of evidence and the order should therefore be enjoined.

VII.

The Order of the Interstate Commerce Commission Constitutes an Act in Contravention of the Constitution of the United States.

All authority of the Federal Government to regulate intrastate commerce under the Constitution is derived from Section 8 thereof, which grants the power "to regulate commerce * * * among the several States." In a long line of cases the Court has held the authority to regulate commerce between the States necessarily embraces the right to control "in all matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance." Shreveport Case, 234 U. S. 342 (351), and cases cited therein. In the case just cited it was held that the proper regulation of interstate commerce necessarily embraced the power to remove discrimination against shippers and localities in interstate commerce caused by intrastate rates fixed by State authority. In Railroad Commission of Wisconsin, *supra,* it was held that in order to maintain an adequate transportation system for interstate commerce Congress could "re-

strain undue limitation of earning power of the interstate commerce system in doing such work."

It was said by the Court below (R. 46):

> "No attack has been made before us upon the constitutionality of the enactment. Such an attack would probably be sufficiently met by what was said in the suit of Wisconsin Railroad Commission v. C. B. & Q. R. R. Co., 257 U. S. 563."

It is true that no attack was made upon the constitutionality of the enactment, but in the original and supplemental bills it was alleged that the order of the Commission was in contravention of the Constitution of the United States and this point was insisted upon throughout. We do not question the constitutionality of Federal action fixing intrastate rates where it is established that such rates discriminate against interstate commerce or cast a burden thereon. We do insist, however, that the Constitution vests no power in the Federal Government to regulate intrastate rates in the absence of a showing of discrimination against persons and localities in interstate commerce, or a showing that such rates constitute a burden on interstate commerce. It is submitted that under the principles announced in the Wisconsin case, the scope of the Commission's order cannot be sustained on the ground that the intrastate traffic discriminates against persons and localities in interstate commerce. It is further submitted that intrastate rates, which do not discriminate against persons and localities in interstate commerce, cannot be regulated by Federal power solely because of dis-

parity between such rates and certain other interstate rates because there does not exist necessity of regulating those rates in order to protect and preserve the instrumentalities of interstate commerce.

As stated by the principal witness for the complainant, the proceeding before the Interstate Commerce Commission was "not a revenue case" (R. 417). No attack was made on the Florida intrastate rates as being too low. The State of Florida had not "made or imposed" such rates. The Interstate Commerce Commission had not fixed the general level of interstate log rates, nor did it require the intrastate rates in the complaining State of Georgia, or any other neighboring States, to be increased to the level prescribed for Florida. The rates in those States not only were on a lower level than the rates in Florida but the proper authorities of those States are left free to further reduce them. The Florida log rates throughout the length and breadth of the State are not only prescribed on a higher level than obtain in neighboring States, but all power of the State of Florida to reduce or increase any of them is ended. The record establishes that the transportation of logs is overwhelmingly in intrastate movement (R. 502). This necessarily results from the fact that the transportation of logs is usually for short hauls, not to exceed 170 miles, because of the fact that there is so much waste resulting from the manufacture of the logs into lumber that it is uneconomical to pay transportation charges for long hauls thereon. The log traffic within Florida is shown to be heavy and the

continued existence of plants costing many millions and of the communities surrounding them is shown to be dependent upon the continuance of the intrastate rates upon the level voluntarily maintained by the Atlantic Coast Line Railroad at the time of the hearing. On the other hand, it is shown without contradiction that there was practically no interstate movement and that no interstate movement of comparable proportions with the intrastate traffic could result under the rates prescribed. Will this Court hold that by construction and implication the Interstate Commerce Commission is empowered, in such a case as this, to set aside all authority and control of a sovereign State over rates and charges on which its economic prosperity may depend? Does this not constitute invasion of the rights and powers reserved to the State by the Constitution and reaffirmed by the very Congressional act which created the Interstate Commerce Commission and gave to it all of the powers which it enjoys?

Unless the regulation of the rates on logs between points in Central and Southern Florida was shown to be necessary to the efficient control of interstate commerce, or to the maintenance of an adequate transportation system for interstate commerce, the Constitution grants no power over said rates to the Federal Government. We have elsewhere undertaken to show that there was no substantial evidence submitted to the Interstate Commerce Commission to establish the necessity of increasing the rates in Central and Southern Florida in order to maintain an efficient transpor-

tation system, and that there was no substantial evidence that the increase in such rates would result in any greater return to the carrier engaged in interstate commerce. In the absence of such evidence the order of the Commission was in contravention of the Constitution of the United States. To sustain such an order not only must there be a preponderance of evidence but that evidence must support a finding of a substantial discrimination against or burden upon interstate commerce. In *Lawrence* v. *St. L. S. F. Ry. Co.*, 274 U. S. 588, the Court stated that while the Federal power is paramount it should not be exerted "unnecessarily, hastily or harshly." We submit that the Federal power does not exist unless and until its exercise becomes *necessary,* that is, necessary to the proper control over interstate commerce and the maintenance of the facilities therefor. Until such necessity is established by a preponderance of evidence there is no such power in the Federal Government. We submit that there is an absolute want of any evidence to show such a necessity and that therefore the order of the Interstate Commerce Commission was in contravention of the provisions of the Constitution of the United States.

VIII.

The Action of the Interstate Commerce Commission Under the Circumstances of this case Constitute an Unwarranted Exercise of Federal Power and Unnecessary, Hasty and Harsh Interference with the Power of the State.

Unless the order of the Interstate Commerce Commission is enjoined and set aside, the rates on logs between all points "within and throughout the entire state of Florida, without exception" are not only removed from all control by the State of Florida but they are "frozen" in that they can be neither more nor less than the rates which the Commission prescribed for present application between north Florida and southern Georgia. Therefore, as to one of the principal national resources of the State, Florida is deprived of all control over the transportation thereof within its own borders. The transportation of logs is overwhelmingly intrastate in character and yet the Federal authority is exercised in negation of the State's control. This drastic invasion of the rights and powers of a sovereign State over its domestic concerns finds it sole justification in a finding by the Interstate Commerce Commission that the rates involved discriminate against interstate commerce as a whole. This finding was made in a case in which the principal, if not the sole issue, was one of discrimination as between persons and localities, and the question as to whether the rates throughout Florida discriminated against interstate commerce as

a whole was not tried out by the parties, as the complainant offered no evidence thereon.

The jurisdiction of the Interstate Commerce Commission over intrastate rates to remove discrimination against interstate commerce generally is conferred only by interpretation which carries "the rules of interpretation to the extreme limit." Such evidence as was offered to show discrimination against interstate commerce generally was not "persuasive" of any "real discrimination against, and obstruction to interstate commerce." The fact is that in performing its function of prescribing interstate rates and of removing discrimination between persons and localities, the Commission had presented to it certain intrastate rates which it thought were improper and should be changed. It thereupon cast about for some basis of exercising jurisdiction to change that which it thought to be wrong, and seized upon the allegation in the bill that such intrastate rates "cause undue and unreasonable and unjust discrimination against interstate commerce, in violation of section 13 of the interstate commerce act," and proceeded to fix the intrastate rates because, as the Commission said, "it is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory."

Appellant respectfully submits that the action of the Interstate Commerce Commission under the circumstances above recited was an unwarranted exercise of the Federal power, was unnecessary, hasty and harsh,

and is contrary to the provisions of the Federal Constitution and of the Interstate Commerce Act. In such a case as this the Court should have intervened to protect the State of Florida from an unwarranted intrusion by an agency of the Federal Government into its domestic affairs.

We further submit that this Court has made it clear in numerous cases that interference by the Interstate Commerce Commission with intrastate rates could be sustained only where the discrimination was real and constituted a real obstruction to interstate commerce, and that this Court has not contemplated that the power which it gave to the Commission by construction and interpretation would be exercised in any such case as this.

We further submit that "the demands of comity and courtesy" which this Court has said it is important to defer to, have been violated. The Interstate Commerce Commission, without giving the Florida Commission an opportunity to act, has fixed a hard and fast schedule of rates on logs for application throughout the State of Florida on a level higher than obtains in neighboring States, which neighboring States are left free to make such changes in the rates within their borders as they deem necessary and lawful. Florida alone is divested of all authority over its domestic log rates and Florida shippers compelled to pay rates prescribed by a Federal tribunal which are higher than are charged to shippers in Georgia, South Carolina and other neighboring States.

We, therefore, submit that we have here a plain case of unwarranted and unlawful interference with State authority and that the lower court should have granted the relief prayed for in the bill and supplemental bill and should have permanently enjoined the order of the Interstate Commerce Commission.

CONCLUSION.

We submit that if the order of the Commission in this case can be sustained then all authority of the State over its domestic rates is at an end. The Commission here, in a case instituted for and on behalf of shippers and directed primarily to the removal of discrimination against persons and localities in interstate commerce, has ordered an increase in rates which cannot be held to discriminate against such persons and localities and has done so under the guise of its duties to maintain the revenue of the carriers upon evidence which consisted entirely of a showing of disparity in rates without a showing of operating conditions. The power of the Commission to change intrastate rates because same are so low as to prevent the Commission from performing its duties under Section 15a is not directly granted but is found only by interpretation. This Court has not heretofore sustained such power except in cases where rates imposed by State authority were not permitted to be increased in accord with general orders of the Interstate Commerce Commission, made in order to carry out the intent of Section 15a,

and applicable to all rates. If, on the complaint of a shipper and in cases where the Interstate Commerce Commission has fixed no general level of interstate rates, the Commission can deal with particular intrastate rates and order them changed, there is nothing left of State power over intrastate rates. It is, therefore, respectfully submitted that the order of the Interstate Commerce Commission goes beyond the powers vested in the Commission and unnecessarily, and without warrant of law, invades the rights of the States and that same must be enjoined.

Respectfully submitted,

J. V. NORMAN,
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Inter-Southern Building,
Louisville, Ky.

April 9, 1930.

APPENDIX.

STATUTES RELIED UPON.

The Interstate Commerce Act, (41 Stat. L., 474):

Section 1:

(1) That the provisions of this Act shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

(c) The transmission of intelligence by wire or wireless;—

from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation or transmission takes place within the United States.

(2) The provisions of this Act shall also apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid:

(b) To the transmission of intelligence by wire or wireless wholly within one State and not transmitted to or from a foreign country from or to any place in the United States, as aforesaid; or

* * * *

(5):

"All charges made for any service rendered or to be rendered in the transportation of * * * property * * * shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful."

Section 3 (1):

"That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Section 13 (1):

"That any person, firm, corporation, company or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of laws thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matter complained of in such manner and by such means as it shall deem proper."

Section 13 (2):

"* * * the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning

which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders of the payment of money."

(3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also

authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby the law of any State or the decision or order of any State authority to the contrary notwithstanding.

Section 15 (1):

"That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged or col-

lected, by any common carrier or carriers subject to this Act for the transportation of * * * property * * * as defined in the first section of this Act, * * * is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged * * * and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect, any rate, fare or charge, for such transportation * * * other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be * * *."

Section 15a (2):

"In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management, and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for

and used in the service of transportation. Provided, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust and unreasonable, and to prescribe different rates for different sections of the country."

Section 15a (3):

"The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: *Provided,* That during the two years beginning March 1, 1920, the Commission shall take as such a fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account."

The District Court Jurisdiction Act (C. 32, 38 Stat. L., 219):

"The Commerce Court, created and established by the Act entitled 'An Act to create a Commerce Court and to amend the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hun-

dred and eighty-seven, as heretofore amended, and for other purposes,' approved June eighteenth, nineteen hundred and ten, is abolished from and after December thirty-first, nineteen hundred and thirteen, and the jurisdiction vested in said Commerce Court by said Act is transferred to and vested in the several district courts of the United States, and all Acts or parts of Acts in so far as they relate to the establishment of the Commerce Court are repealed. Nothing herein contained shall be deemed to affect the tenure of any of the judges now acting as circuit judges by appointment * * *.

The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation, or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the Commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment, the term 'destination' shall be construed as meaning final destination of such shipment.

The procedure in the district courts in respect to cases of which jurisdiction is conferred upon them by this Act shall be the same as that heretofore prevailing in the Commerce Court. The orders, writs, and

processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States; and the right of appeal from the district courts in such cases shall be the same as the right of appeal heretofore prevailing under existing law from the Commerce Court. No interlocutory injunction suspending or restraining the enforcement, operations, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit; *Provided,* That in cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges, concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General, allow a temporary stay or suspension, in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for

the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said Commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. A final judgment or decree of the district court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such case the notice required shall be served upon the defendants in the case and upon the attorney general of the State. All cases pending in the Commerce Court at the date of the passage of this Act shall be deemed

pending in and be transferred forthwith to said district courts except cases which may previously have been submitted to that court for final decree and the later to be transferred to the district courts if not decided by the Commerce Court before December first, nineteen hundred and thirteen. * * *."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929

STATE OF FLORIDA AND A. S. WELLS, E. S. MATHEWS, ET AL
Appellants,
vs.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.
NO. 16

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, AND CUMMER CYPRESS COMPANY,
Appellants,
vs.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.
NO. 17

WILSON LUMBER COMPANY OF FLORIDA,
Appellant,
vs.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.
NO. 18

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR ATLANTIC COAST LINE RAILROAD CO.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929

STATE OF FLORIDA AND A. S. WELLS, E. S. MATHEWS, ET AL *Appellants,* vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.	NO. 493
BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, AND CUMMER CYPRESS COMPANY, *Appellants,* vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.	NO. 494
WILSON LUMBER COMPANY OF FLORIDA, *Appellant,* vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.	NO. 495

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF ON BEHALF OF
ATLANTIC COAST LINE RAILROAD COMPANY

PART ONE

STATEMENT OF THE CASE

The Atlantic Coast Line Railroad Company was the defendant in the proceeding before the Interstate Commerce Commission out of which these appeals grew (R. 16*). It is a carrier by railroad, having about 5100 miles of line, about 2200 of which are within the State of Florida. It does business as a common carrier by railroad over its own lines in the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama (R. 154). It intervened in this litigation (R. 149).

SUBJECT MATTER OF THE LITIGATION

The subject matter of the litigation is an order of the Interstate Commerce Commission (R. 26) fixing rates for intrastate transportation in Florida of logs moving over the lines of the Atlantic Coast Line Railroad Company in Florida for distances up to 170 miles. This order was issued on the 2nd day of August, 1928, effective on or before October 10, 1928 (R. 26). For the Commission's report see page 16 of record.† The effective date of this order was moved forward by orders of the Commission until December 10, 1928 (R. 10).

The petitioner in the proceeding before the Interstate Commission was the Georgia Public Service Commission. The

*Vol. 1 of Record ends with page 544;
Vol. 2 contains pages 545 through 1031.

†Georgia Public Service Commission vs. A. C. L. R. R., 146 I. C. C. 717.

order of the Interstate Commission was twice amended. The first was on the 5th of February, 1929 (R. 90). The effect of this amendment was to make it clear that the order did not apply to ash, gum, hickory, oak, pine and cypress logs not over six feet in length. These are sometimes referred to as short logs. The second amendment was on the 7th day of February, 1929 (R. 90). This substituted for the words "within the State of Florida" the following: "Within and throughout the entire State of Florida, without exception." This last amendment was made for the purpose of removing some lack of clarity which was thought to exist in the order by the United States District Court for the Northern District of Georgia, which is pointed out in paragraph 4 of the opinion rendered on the 17th day of January, 1929; which opinion begins at page 44 of the record, and the 4th paragraph begins at page 50. In its aforementioned report the Commission found as follows (R. 16, 17):

> "1. Interstate rates on logs, except walnut, cherry, and cedar, in carloads, from Florida points north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, Fla., to destinations in Georgia found unreasonable. Reasonable rates prescribed.
>
> 2. Florida intrastate rates on logs, except cedar, in carloads, found to be unduly preferential of shippers in intrastate commerce, unduly prejudicial to shippers in interstate commerce, and unjustly discriminatory against interstate commerce. Rates prescribed which will remove such preference, prejudice and discrimination."

These findings are somewhat more elaborated in the body of the report, beginning at page 25.

The effect of the report and order was to fix interstate rates on logs (by the word "logs" we exclude short logs above

referred to and include the kind of logs mentioned in the above quotation from the Commission's report) found by the Commission to be reasonable, "from points on its lines in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs to destinations on its lines in the State of Georgia," and to hold that the existing rates for intrastate movement of logs over the Atlantic Coast Line Railroad in Florida, for distances not exceeding 170 miles, were unreasonable and unduly preferential to shippers in intrastate commerce, unduly prejudicial to shippers in interstate commerce, and unjustly discriminatory against interstate commerce, and to prescribe rates removing such preference, prejudice and discrimination.

Three bills were filed in the United States District Court for the Northern District of Georgia seeking to restrain and enjoin the operation of the above mentioned order. One of them was filed by the State of Florida and the three members of the Florida Railroad Commission. (A. S. Wells, E. S. Mathews and Mamie G. Eaton) (R. 1); another by Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company (R. 870); and another by Wilson Lumber Company of Florida (R. 960). These bills were consolidated for the purpose of trial (R. 900). The case thus consolidated was heard, and on January 17, 1929, an opinion was rendered by the United States District Court for the Northern District of Georgia (presided over by three judges—Mr. Circuit Judge Walker, Mr. District Judge Sibley, and Mr. District Judge Dawkins) (R. 44), and a decree was entered on the same date (R. 52) denying the relief prayed by the complainants and dismissing the bill. The opinion referred to in paragraph 4 thereof (R. 50) appeared to construe the

order of the Commission to be limited to shipments on the Coast Line in the State of Florida north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs. (30 Fed. 2d, 116.)

After this decree was rendered the Florida Commission issued its order of January 30, 1929 (R. 128), undertaking to declare the Interstate Commission's order to be limited to an extent as therein set out and which limitation would have made the Commission's order completely ineffective. There then followed a complicated litigation which is detailed in a motion made by the Atlantic Coast Line and is found at page 150 of the record. That litigation is now thought to be irrelevant to the questions before this Court.

After the two orders of the Interstate Commission of February 5th and February 7th, amending the Commission's original order, petitions for rehearing and supplemental bill of complaint were filed by the State of Florida and the Florida Commission (R. 52 et seq.); another by Wilson Lumber Company of Florida (R. 985); and another by Brooks-Scanlon Corporation, Wilson Cypress Company, and Cummer Cypress Company (R. 902). The motion for rehearing was allowed and rehearing had, and an opinion on the rehearing was rendered on March 22, 1929 (R. 167), (31 Fed. 2d, 580) and a decree was entered on that opinion on April 22, 1929 (R. 170). The crucial part of that decree is as follows:

> "It is, for the reasons stated in our opinion, March 22nd, 1929 (which opinion is duly filed as part of the record), ordered, adjudged and decreed that the original and supplemental bill be and the same hereby is now dismissed and the relief prayed denied."

The effect of this decree was to leave the order of the Interstate Commerce Commission, amended as hereinbefore

referred to, in full force and effect. Under this order, as we have pointed out, the Interstate Commission fixed rates for the movement of logs intrastate in Florida over the Atlantic Coast Line for distances not exceeding 170 miles, which were in excess of those previously in force for such traffic; and which rates thus fixed were intended to remove the preference, prejudice, and discrimination which the Commission had found to be worked by the Florida rates which were thus superseded. The appeals in these cases are from this last order.

The scale of Intrastate Rates condemned by the Commission is known as the Cummer scale.

It will be noticed that the intrastate rates (the Cummer scale) complained of were applicable over only the lines of the Atlantic Coast Line in Florida and for the maximum distance of 170 miles.

The corresponding rates for distances beyond 170 miles were much higher proportionately than the ones up to that maximum distance; and the rates on the same commodity over other lines of railroad in Florida for like distances were also much higher.

The Commission's report and order deal with discrimination, and the Commission found, as we have seen, that there was undue and unreasonable preference to shippers in intrastate commerce and undue prejudice to and unjust discrimination against interstate commerce.

The rates in the Cummer scale of rates, condemned by the Commission, were so low that they did not carry their fair part of the burden of the operation of the railroad, and made the carriage of the commodity involved (logs) a burden upon interstate commerce.

These are questions of fact, and we will undertake to analyze the evidence to show that the findings were made after full hearings and on ample evidence.

A SYNOPSIS OF THE ANALYSIS OF THE EVIDENCE

(1) History of Cummer Scale of Rates. *Page* 11

(2) Relationship between the Rates under the Cummer scale and the Florida-Georgia interstate scale on August 2, 1928, and the latter scale as fixed in this proceeding shows that the Cummer scale rate is less than half of the rates under either of the other scales. *Page* 14

(3) Relationship of the Cummer rates to intrastate rates on the same commodities in Georgia, shows that the Cummer scale of rates is not more than one-half of the rates prescribed by the Georgia Commission for the same commodities intrastate in Georgia.

It was this condition, called by the Georgia Commission "intolerable", which brought on the proceeding before the Interstate Commission. *Page* 17

(4) Florida Commission condemned the Cummer scale of rates.

The Florida Commission condemned the Cummer scale, when it was offered, as being too low and as being discriminatory, and as being prejudicial to commerce in all classes of freight. *Page* 19

(5) Comparison of the Cummer scale of rates between points in Florida with rates on same commodities between points in Florida and points in Georgia shows that the Cummer scale of rates is much less than one-half, often about one-third of the interstate rate from Florida to Georgia; and that a car of lumber manufactured in Valdosta or Thomasville, Ga., would be at a disadvantage of $69.00 as compared with a car

manufactured in Florida and moving a like distance from forest to mill. *Page* 22

(6) Comparison of Cummer scale with the intrastate scales in North Carolina, South Carolina, Georgia, and Alabama, and with interstate rates, shows that the Cummer scale is less than one-half of the average of the rates under those scales. *Page* 25

(7) Comparison of Cummer scale of rates with the rates on the same kind of logs moving intrastate over Florida railroads other than Atlantic Coast Line, shows that the Seaboard Air Line's rates are about twice as high. This latter road operates about 1850 miles in Florida, while the Atlantic Coast Line operates about 2200 miles. *Page* 27

The Cummer scale "is the lowest scale to be found."
(Abrams) *Page* 27
(Price) *Page* 26

(8) Like comparison with the corresponding rates on the Georgia-Southern & Florida Railway shows approximately even greater disparity than that shown by comparing the Seaboard's rates.

Various kinds of comparisons are made by the witness Potter, of the Georgia-Southern & Florida—state and interstate—showing the Cummer scale to be only one-third to one-half of other rates. *Page* 29

(9) The Central of Georgia Railway intervened and gave testimony to the "far reaching effect if the Florida rates are extended into Georgia." *Page* 30

(10) Comparison of the rates on logs under the Cummer scale with the rates on other commodities having like kind of transportation characteristics shows that the Cummer scale is only about 40 per cent. of the rate on brick; and the yield on the carriage of logs is much less than on the carriage of the same amount of cotton

seed, cotton seed hulls, clay, gravel, sand, stone, asphalt, shale, cord wood, cross ties, cement, etc.

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(11) More detailed comparison of rates on logs with brick, sand, gravel and cement shows the continued and great discrimination in favor of the log movement; and also the great discrimination against interstate commerce. For instance, the revenue on a car of logs weighing 55,000 pounds moving interstate 50 miles from Florida would be $27.50; and if the same car had moved intrastate in Florida, it would have been $11.55. *Page* 34

(11a) Comparison of percentage relationship which the Cummer scale rates on logs bear to lumber rates ordered by the I. C. C. in Meridian case, 60 I. C. C. 5. *Page* 36

(12) Extent of discrimination which will be worked by a continuance of the Cummer scale.

The amount of timber to be cut into logs and transported is measured by hundreds of millions of feet. It will require 59,529 car loads of logs to move the 250 million feet of cypress of the Wilson Cypress Company. To move the Cummer Cypress timber it would take 28,257 car loads. It will require 186,800 car loads of logs to remove more than one billion feet of logs of the Brooks-Scanlon Corporation. The Putnam Company's holdings aggregate more than a billion feet.

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(13) Undue discrimination which the Cummer scale works against the Georgia manufacturer of lumber in the markets of consumption.

If logs moved 150 miles intrastate in Florida and were manufactured into lumber and sold in a market of the Northeast, that is, from Washington, D. C., up to Portland, Maine, the Florida lumber would have an advantage of $61.50 a car as against lumber manufactured from the same logs moved the same distance to a

Georgia manufacturing point. This is more than sufficient to give the Florida manufacturer monopoly of those markets. *Page* 39

(14) The territorial extent of investigation.

The Commission investigated the condition of timber and logs and mills at many points in Florida throughout the northern part of the State, the center of the State, and quite far in the south. If the points investigated by the Commission were used as a center and circles were drawn from them with a radius of 170 miles (the maximum distance of the Cummer scale) those circles would overlap many times. *Page* 42

(15) Cost Studies.

Evidence was offered by the Atlantic Coast Line Railroad to show that the cost of an average haul from Perry and Carbur to Eastport and Milldale, left only $1.34 after deducting the cost, not including taxes and equipment rentals. The Florida Commission offered evidence that showed this item to be $5.85 per car. Neither of these cost studies dealt with the individual car load shipments. Thus the Commission had before it evidence on the question of costs. *Page* 45

(16) There is timber in the northern part of Florida available for use in Georgia.

The evidence shows that there is substantial timber in the northern part of Florida available for use by manufacturers in Georgia. Little of this is in large tracts. It shows that there is a great deal of timber in north Florida which would be available for manufacture in Georgia, except for the fact that it is owned by mill owners operating in Florida. The evidence also shows that this difference in freight rate has a substantial effect upon the market for stumpage and that the rate thus affecting the market for stumpage affects inter-

state commerce from its origin and that this continues on until the manufactured product reaches the market. *Page* 49

(17) Rates in South Florida. *Page* 53

(18) Similarity of circumstances and conditions of transportation covered by comparisons of rates. *Page* 54

It is submitted that the evidence amply sustains each finding made by the Commission; that the hearings were full; investigations were State-wide; and the conclusion reached by the Commission as to undue preference to intrastate shippers and undue prejudice and discrimination against interstate shippers and interstate commerce was necessary. There were two hearings—one at Valdosta, Georgia, beginning on October 20, 1926 (R. 399), and the other at Jacksonville, Florida, on January 18, 1927 (R. 531), twenty-six witnesses were examined and fifty-three exhibits were offered, and the case went through a long contest in the Commission and in the courts below.

ANALYSIS OF THE EVIDENCE
CUMMER SCALE OF RATES.

(1) When these proceedings were instituted before the Interstate Commerce Commission the Atlantic Coast Line Railroad Company had in effect in Florida a scale of rates for intrastate transportation of logs for distances up to 170 miles. These distances were in gradations of five miles and the rates were in gradations much longer than five miles. These rates were known as the Cummer scale. This scale is described by the Interstate Commerce Commission in its report as follows:

"On June 29, 1903, a contract was entered into between the Jacksonville & Southwestern Railroad and the

Cummer Lumber Company, controlled by the same interests, under which the former agreed to transport logs for the latter at certain specified rates for a period of 15 years. The Jacksonville & Southwestern extended from Jacksonville southwesterly to Newberry, Fla., approximately 85 miles. The mills of the Cummer Lumber Company were at Milldale, near Jacksonville. Under this contract the rates per car of 50,000 pounds were $4 for distances under 40 miles, $7 for distances from 40 to 60 miles, and $8 for distances from 60 to 90 miles, with $1 per car additional for each 10 miles over 90, the rate from the Suwanee River not to exceed $10 per car. These rates are generally referred to as the Cummer scale. Defendant acquired the properties of the Jacksonville & Southwestern in 1904 and had to assume the obligations of that company under the contract referred to. Upon its expiration in 1918 the contract was not renewed. In the meantime, on January 26, 1914, defendant entered into a similar contract with the Carpenter-O'Brien Company, the predecessor of intervenor Brooks-Scanlon Corporation, which was to continue in effect until such time as the timber in LaFayette and Perry Counties, Fla., then owned by the Carpenter-O'Brien Company, consisting of approximately 1,000,000,000 feet of pine, largely tributary to defendant's line extending from Newberry to Perry, Fla., had been transported. The contract provided for movement from points between Clara, and Perry, inclusive, to the plant of the lumber company at Eastport near Jacksonville, 142 to 166 miles, in trainloads of not less than 30 cars per day, or 60 cars every other day, Sundays and legal holidays excepted, at a rate of $12 per car, minimum 50,000 pounds, excess in proportion. It was stipulated that the contract should be subject to Federal and Florida laws and to the order of any court or commission of competent jurisdiction. Pursuant to this contract defendant filed schedules with the Florida commis-

sion extending the Cummer scale to $11 per car for distances from 110 to 130 miles, and $12 per car for distances from 130 to 150 miles. That commission refused to permit the proposed rates to become effective because they were published to apply only on train loads and were not available to all shippers. It further advised defendant that the rates themselves were too low and such as might be deemed confiscatory. The rates were republished to apply on carloads over all of defendant's Florida lines and became effective October 30, 1914. On July 5, 1916, the scale was extended so as to apply the $12 rate for distances to 160 miles. On April 30, 1919, the scale was further extended by establishing a rate $16.50 for distances to 170 miles, the latter rate including the 25 per cent general increase of June 25, 1918. These rates were established and, as modified by the subsequent general increases and reduction, have been continued by defendant for the purpose of complying with its contractual obligations and not because it considers the scale proper for general application on intrastate traffic within Florida."

(R. 19. 146 I.C.C. 717, 719.)

The contract between the Jacksonville & Southwestern Railroad Company and the Cummer Lumber Company was made "coincident with the sale of the railroad" to the Atlantic Coast Line (R. 470). When the Atlantic Coast Line tendered its freight tariff No. 3282 to the Florida Commission, carrying out the contract, to become effective on July 15, 1914, it was rejected because it applied only to train loads of a minimum of twenty-eight cars (R. 471).

It then tendered a second tariff No. 3339, to become effective October 3, 1914, and this was rejected because it contained a provision to the effect that "when two or more cars

are shipped from one station in one day by one shipper, for delivery to one consignee at one destination, these rates will be charged for an average carload weight of 50,000 pounds per car," etc. A third tariff No. 3373 was tendered, effective October 30, 1914, making the same scale applicable "for general application between points on the Atlantic Coast Line Railroad in Florida on logs, carload, per car 50,000 pounds, excess in proportion" (R. 471). This last filing was accepted by the Commission. Attention is called to Exhibit No. 15, the Commission's letter on the subject, dated the 9th of October, 1914, and Exhibit No. 16, dated August 18, 1915, which showed the disapproving manner in which the Commission allowed this filing. These exhibits will be hereinafter more fully discussed. (R. 270, 272).

This finding by the Commission is fully sustained by the witness Perrin (R. 469).

These rates are so low that the Commission has found that they were unduly preferential of shippers in intrastate commerce, unduly prejudicial to shippers in interstate commerce, and unjustly discriminatory against interstate commerce (R. 17).

THE RELATIONSHIP BETWEEN THE RATES UNDER THE CUMMER SCALE AND THE FLORIDA-GEORGIA INTERSTATE RATE SCALE ON AUGUST 2, 1928 (THE DATE OF THE REPORT), AND THE RELATIONSHIP BETWEEN THE CUMMER SCALE AND THE INTERSTATE RATES WHICH THE COMMISSION FIXED IN ITS SAID REPORT.

(2) The relationship of the rates under the Cummer scale to the Florida-Georgia interstate rates, which were in effect on August 2, 1928, and the relationship to the rates which the

Interstate Commission proposed for interstate transportation and actually established are shown at page 22 of the record and at page 721 of the official report in the 146 I.C.C. That is as follows:

Distance	*Florida-Georgia Interstate*		*Florida Intrastate*		*Proposed Interstate*	
	Rate Cents	Earnings	Rate Cents	Earnings	Rate Cents	Earnings
5 miles	2.5	$12.50	1.71	$8.85	2.5	$12.50
10 "	3	15.00	1.71	8.55	2.5	12.50
15 "	3.5	17.50	1.71	8.55	3	15.00
20 "	3.5	17.50	1.71	8.55	3	15.00
25 "	4	20.00	1.71	8.55	3.5	17.50
30 "	4	20.00	1.71	8.55	3.5	17.50
35 "	4.5	22.50	1.71	8.55	4	20.00
40 "	4.5	22.50	1.71	8.55	4	20.00
45 "	5	25.00	2.10	10.50	4.5	22.50
50 "	5	25.00	2.10	10.50	4.5	22.50
55 "	5.5	27.50	2.10	10.50	4.5	22.50
60 "	5.5	27.50	2.10	10.50	5	25.00
65 "	6	30.00	2.30	11.50	5	25.00
70 "	6	30.00	2.30	11.50	5	25.00
75 "	6.5	32.50	2.30	11.50	5.5	27.50
80 "	6.5	32.50	2.30	11.50	5.5	27.50
85 "	7	35.00	2.30	11.50	5.5	27.50
90 "	7	35.00	2.30	11.50	6	30.00
95 "	7	35.00	2.60	13.00	6	30.00
100 "	7	35.00	2.60	13.00	6	30.00
110 "	7.5	37.50	2.80	14.00	6.5	32.50
120 "	8	40.00	3.20	16.00	6.5	32.50
130 "	8.5	42.50	3.20	16.00	7	35.00
140 "	8.5	42.50	3.40	17.00	7	35.00
150 "	9	45.00	3.40	17.00	7.5	37.50
160 "	9	45.00	3.40	17.00	7.5	37.50
170 "	9.5	47.50	3.70	18.50	8	40.00

NOTE: The interstate rates which are referred to above as "proposed" are the rates established by the Commission in its order in this case (R. 27).

It must be borne in mind that this Cummer scale of rates was applicable on the lines of only the Atlantic Coast Line and for distances only 170 miles maximum and that it was not applicable to shipments of logs moving over any other road, or in part over the lines of the Atlantic Coast Line and any other road, nor was it applicable by rail and water.

It will be noticed that for a distance of 50 miles the rate applicable in interstate commerce between the two States per hundred pounds was 5 cents, while the Florida intrastate rate was 2.10 cents and the newly established interstate rates 4.5 cents. For that distance a car in interstate commerce would earn $25.00; a car in Florida intrastate commerce would earn $10.50; and a car moving under the newly established interstate rates would earn $22.50. In other words, the Florida intrastate earnings were less than half of what the earnings would have been on the proposed interstate scale.

At 75 miles the Florida-Georgia interstate rate was 6.5 cents per hundred pounds; the Florida intrastate scale (Cummer) was 2.30 cents; the Florida interstate scale as established in this report was 5.5 cents. The car earnings under the interstate scale were $32.50; under the intrastate scale $11.50; and under the newly established interstate scale $27.50.

At 100 miles the interstate scale was 7 cents and car earnings $35.00; the Cummer scale rate was 2.60 cents, and car earnings $13.00; under the newly established interstate scale the rate was 6 cents, and car earnings $30.00.

At 170 miles the interstate rate was 9.5 cents, and car earnings $47.50; the Cummer rate was 3.70 cents, and car earnings $18.50; and under the newly established interstate scale the rate was 8 cents, and car earnings $40.00.

The Commission found (R. 26) that "whether the aforesaid rates pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by defendant under substantially similar circumstances and conditions."

See 146 I.C.C. 725.

RELATIONSHIP OF THE RATES UNDER THE CUMMER SCALE TO INTRASTATE RATES ON THE SAME COMMODITIES IN GEORGIA.

(3) In 1916 the Georgia carriers filed a petition with the Georgia Public Service Commission for a general revision of intrastate freight rates in Georgia. After extended hearings the Commission revised all class and commodity rates, including the rates on logs, to become effective in September, 1918. Because of war conditions the effective date of the order was indefinitely postponed. On July 14, 1921, the Georgia Commission required the carriers to submit schedules of rates for the purpose of removing existing irregularities and discrimination between points in Georgia. Extensive hearings were had under this order. In October, 1923, the Commission submitted proposed or tentative rates on logs. Criticisms on this schedule were heard by the Commission on November 26, 1923. Objections were made and considered, and the Commission entered a final order on the 15th of April, 1925, to become effective June 1, 1925. The effective date of this order was postponed to August 1, 1925. At a hearing in July, 1925, the Florida rate situation in reference to logs was brought to the attention of the Georgia Commission. Evidence was received by the Georgia Commission at that hearing from a number of witnesses to the effect that should the Georgia

Commission require the new and revised and increased rates to go into effect it would have the effect of moving industries located in Georgia to Florida "where even the present rates are much lower than the present Georgia scale" (R. 402, 403). The Georgia Commission brought this to the attention of the Atlantic Coast Line with request that its traffic officials consider extending the Florida intrastate rates complained of into the State of Georgia, and they declined to do so (R. 404). The Georgia Commission then sought relief from the situation through the Interstate Commerce Commission.

The Commission, at page 722 of its report, said (R. 22):

> "Complainant introduced exhibits showing that defendant's proposed interstate rates are higher than its intrastate log rates in various of the southeastern States, than the average of such intrastate rates, and than the combined average of its intrastate and interstate rates. Rates substantially the same as those proposed by defendant were, however, prescribed by complainant in 1925 for application within Georgia, and while complainant's order was later rescinded, its rate expert testified that the rates then prescribed were in his opinion on a reasonably low basis."

This statement is justified by the evidence of the witness Price, Rate Expert of the Georgia Commission (R. 418).

The Georgia rates, proposed in 1925 and suspended because of this Florida situation, are shown in Exhibit No. 24 (R. 291).

The rates provided by the Cummer scale are not more than one-half of the rates prescribed by the Georgia Commission. The Georgia Commission in suspending the rates submitted to the carriers on April 15, 1925, wrote a letter to the carriers saying:

"The evidence submitted at the rehearing reveals, what is in the opinion of the Commission, an intolerable situation, as regards the rates in Florida, as compared with the interstate rates between Georgia and Florida, and the effect on this situation of the suspended rates authorized in the Commission's order."

See evidence of the witness Perrin (R. 480).

FLORIDA COMMISSION CONDEMNED THE CUMMER SCALE OF RATES.

(4) The Interstate Commission finds in its report as follows (R. 20):

"That Commission (Florida Commission) refused to permit the proposed rates to become effective because they were published to apply only on train loads and were not available to all shippers. It further advised defendant that the rates themselves were too low and such as might be deemed confiscatory."

See 146 I.C.C. 720.

This is supported by Exhibit No. 15 (R. 270, 271), which is a letter from J. H. Tench, Rate Expert of the Florida Commission and is addressed to the Freight Traffic Manager of the Atlantic Coast Line Railroad Company, and is dated October 9, 1912. The letter acknowledges receipt of Atlantic Coast Line freight tariff No. 3339, effective October 3, 1914, carrying rates on logs in car loads between stations on the Atlantic Coast Line Railroad up to a distance of 150 miles. The Commission required the striking of one of the provisions of the tariff and thus made the tariff apply on car loads rather than on train loads of logs, and then said:

"The Commissioners wish it distinctly understood that this approval extends only to the method of stating

the rates in this tariff and not to the rates themselves, and that in their opinion they are too low. The rates carried in this tariff are such as might be deemed confiscatory, and there is little doubt in the minds of the Commissioners if they were to order such a scale of rates that your company would contend that they amounted to confiscation and the taking of your property without due process of law."

"To make such a scale of rates for the movement of logs in this State reduces the power of the Atlantic Coast Line R. R. Company to make other just and reasonable rates to be charged on all classes of freights that the public may be interested in. It also reduces the power of this Commission upon complaint and hearing hereafter to prescribe what might be just and reasonable rates to be charged for other freights when the entire revenues of the Atlantic Coast Line Railroad Company are to be taken into consideration. They amount practically to a discrimination against other classes of freight and all other people engaged in different lines of business."

"The Commissioners regret that you have seen fit to publish these extremely low rates. There is no question but that the time will come when these barely remunerative rates will be used as the basis for opposition to the reduction of other rates, where perhaps a reduction might not only be justifiable but necessary, and therefore the Commissioners wish to impress upon you the fact that the low rates carried in your Freight Tariff No. 3339 were not only not ordered into effect or suggested by them, but were published by you in direct opposition to their advice and suggestions."

It is also supported by Exhibit No. 16, which is a letter dated August 15, 1915, and signed by Honorable R. Hudson Burr, Chairman of the Florida Commission (R. 272). Some of the statements in this letter are:

"Beg to advise that the Commissioners thoroughly agree with you that this rate is too low. * * * To be perfectly frank, in the opinion of the Commissioners, this was a preferential rate, made in the interest of the Cummer Lumber Company.

The present Class P rates in this state, which apply on lumber, logs and wood, were put into effect by the Commissioners after an extended investigation, not only of the lumber industry in this state and adjoining territory, but also of the financial condition of the carriers, and we are convinced that these rates are just and reasonable as applicable to this traffic. If you will compare the rates on lumber in this state with the rates on lumber in Georgia, Alabama, South Carolina, North Carolina, Virginia and Tennessee, you will find that our rates are lower than in any of these states, in which states the conditions are practically the same, except in that in each state mentioned the density of population is greater than it is in Florida."

We thus see that the Cummer scale of rates was condemned by the Florida Commission from the beginning as being a burden on other classes of traffic in which the public was interested. The classes of traffic to which the Florida Commission referred as being burdened by this scale of rates were not confined to intrastate matters. The Commission particularly stated that the burden would fall upon "all classes of freight that the public may be interested in." Thus, in the beginning the Florida Commission condemned these rates because they would produce the result which the Interstate Commerce Commission has found that they have produced, to-wit, a discrimination against interstate commerce, and as well a discrimination against shippers and places, and they give undue preference or advantage to a particular description of traffic.

The history of the Cummer scale of rates is given by the witness J. W. Perrin (R. 469). Mr. Perrin was then Assistant Freight Traffic Manager of the Atlantic Coast Line. The rates originated in contract on July 28, 1904, when the Atlantic Coast Line acquired the property of the Jacksonville & Southwestern Railroad Company extending from Jacksonville, Florida, in a southwesterly direction to Newberry, Florida. There was common ownership between the Jacksonville and Southwestern Railroad Company and the Cummer Lumber Company, and at the time of the purchase by the Atlantic Coast Line there was a contract between the Cummer Lumber Company and the Jacksonville and Southwestern Railroad Company covering the same subject.

COMPARISON OF THE RATES ON LOGS UNDER THE CUMMER SCALE BETWEEN POINTS IN FLORIDA WITH RATES BETWEEN POINTS IN FLORIDA AND POINTS IN GEORGIA.

(5) The witness Price filed an exhibit (No. 1) consisting of eleven sheets (following R. 232), which compares the Florida intrastate rate per car of 50,000 pounds with the Florida-Georgia interstate rate. We will refer to only a few of those comparisons:

> At 50 miles the Florida rate is $10.50 and the interstate rate $25.00;
>
> At 100 miles the Florida rate is $13.00 and the interstate rate $35.00;
>
> At 150 miles the Florida rate is $17.00 and the interstate rate $45.00;
>
> At 170 miles the Florida rate is $18.50 and the interstate rate $47.50.

The sheets following this compare the rates intrastate in Florida with the rates on logs originating in Florida and moving corresponding distances to manufacturing destinations in Georgia. The Georgia destinations used are:

Bainbridge	Sheet 2
Albany	Sheet 3
Thomasville	Sheet 4
Quitman	Sheet 5
Valdosta	Sheet 6
Waycross	Sheet 7

Illustrating the discrimination shown in the exhibit mentioned:

A shipment moving on Cummer scale from Burnett's Lake, Florida, to Jacksonville, Florida, a distance of 72 miles, weighing 50,000 pounds, would pay $11.50; and the same shipment moving from Cody, Florida, to Bainbridge, Georgia, a distance of 74 miles, would pay $32.50—a discrimination against Bainbridge of $18.50 per car of logs. The same shipment moving from McAlpin, Florida, to Bainbridge, Georgia, 166 miles, would pay $47.50; and from Greers, Florida, to Perry, Florida, exactly the same mileage, it would pay $18.50—a discrimination against Bainbridge, Georgia, in that instance of $29.00 per car.

Sheet 3 shows the same kind of discrimination against Albany, Georgia; sheet 4 the same kind of discrimination against Thomasville, Georgia; sheet 5 the same kind of discrimination against Quitman, Georgia; sheet 6 the same kind of discrimination against Valdosta, Georgia; and sheet 7 the same kind of discrimination against Waycross, Georgia. Those Georgia towns are all prosperous places, of fair size, located on the Atlantic Coast Line Railroad Company in

South Georgia, all of them within the 170-mile distance and several of them quite close to the Florida line.

Further illustrating: A shipment of logs, 50,000 pounds, moved from Suwanee, Florida, to Jacksonville, Florida, a distance of 135 miles, would pay $17.00; while if the same shipment moved to Thomasville, Georgia, a distance of 112 miles, it would pay $40.00. It is estimated that it will take three cars of logs to make one car of finished material. (See note to sheets 8, 9, 10 and 11 of Exhibit 1). So when the logs have gone through the manufacturing process and a car load of lumber is produced in Thomasville, it starts off with a burden of $69.00 more than it would have had if it had been manufactured in Jacksonville, although the logs out of which the lumber was manufactured moved from the same point of origin. (See sheet 8 of Exhibit No. 1, which follows page 232 of record.)

The same kind of discrimination is shown against Quitman, Georgia, Valdosta, Georgia, and Waycross, Georgia. (See sheets 8, 9, 10 and 11 of Exhibit No. 1.)

See the evidence of the witness Price as to these subject matters (beginning R. 405). At page 413 the witness said:

> "Should the manufacturer at Quitman and Jacksonville both purchase logs at Suwanee, Fla., the manufacturer at Quitman would pay a rate of $35 per car for a distance of 85 miles, whereas his competitor at Jacksonville can get a rate of $17 per car for a distance of 135 miles, and the manufacturer at Quitman would have to absorb $54 on each car of finished material before he could meet the competition of his Jacksonville competitor, notwithstanding the distance from Suwanee to Jacksonville is 50 miles greater than Suwanee, Fla., to Quitman, Ga."

The witness Price's testimony is based upon the use of three cars of logs to make one of the finished product. Other witnesses have testified that it will take three and a half cars of logs to make one of the finished product.

At page 416 of the record the witness testified, after summarizing his Exhibit No. 1:

> "The Georgia manufacturers at Valdosta, Waycross and other points located on the border of Georgia and Florida undoubtedly have to meet the competition of all of these Florida manufacturers on any business they secure in Florida; it therefore follows that the Georgia manufacturer would be at a distinct disadvantage in securing any business on the Atlantic Coast Line in Florida, even if the rates on the finished material are the same from Georgia into Florida as the rates on finished products intrastate in Florida."

There are 65 saw and planing mills on the Atlantic Coast Line in the State of Georgia (R. 623). These mills with their locations are shown in Exhibit 26 (R. 361). 64 of these mills produce per month 16,065,000 feet (Ex. 37, R. 364, 368). The locations of these mills are shown in Exhibit 38 (following R. 368).

COMPARISON OF THE INTRASTATE RATES ON LOGS OVER THE ATLANTIC COAST LINE (CUMMER SCALE) IN FLORIDA, WITH INTRASTATE RATES OVER THE ATLANTIC COAST LINE IN NORTH CAROLINA, SOUTH CAROLINA, GEORGIA, AND ALABAMA, AND WITH THE INTERSTATE RATES, AND A COMPARISON OF THE AVERAGE INTRASTATE AND AVERAGE INTERSTATE RATES.

(6) Exhibit 52 (R. 394) by the witness Price, Rate Expert of the Georgia Commission, shows a comparison between the

Cummer scale of rates, that is, the rates on logs applicable over the Atlantic Coast Line in Florida for a distance of 170 miles (Column E) with the rates intrastate over the Atlantic Coast Line in North Carolina (Column A) and with other rates intrastate in North Carolina over the Atlantic Coast Line (Column B) (these are point to point rates covering a limited field), and with the intrastate rates in South Carolina (Column C), the intrastate rates in Georgia (Column D), and the intrastate rates in Alabama (Column F); the average of the interstate rates (Column G), the average of inter and intrastate rates (Column H), and the average of intrastate rates (Column I) and rates proposed by the Atlantic Coast Line Railroad.

The rate for 50 miles under the Cummer scale is 2.1 cents per hundred pounds. The same rate under one of the scales in North Carolina is 3.25 cents; the other scale in North Carolina 2.7 cents; the South Carolina scale 5.33 cents; the Georgia scale 3.5 cents; the Alabama scale 4.5 cents; interstate, 5 cents; average of inter and intrastate, 3.77 cents; average of intrastate, 3.56 cents. At 100 miles the relation of these rates continues practically the same. At 170 miles, the maximum distance to which the Cummer scale is applicable, very nearly the same ratio continues.

This witness says (R. 706):

> "The Cummer scale is the lowest scale that I have been able to locate."

The same witness said (R. 707):

> "The Georgia Commission is not advocating, in its true sense, any particular scale to be used in satisfying or in removing this alleged discrimination. We do say, and insist, that if the present intrastate rates in Florida

are found by the Interstate Commerce Commission to be reasonable rates for intrastate application in Florida, that that scale be used interstate from Florida to Georgia."

The witness (R. 708) is again insistent that, if the Cummer scale is reasonable, it should be extended to interstate commerce between Florida and Georgia.

Exhibit 52 (R. 394) is a very fair summary of the exhibits containing comparisons of rates.

COMPARISON OF THE RATES UNDER THE CUMMER SCALE WITH THE RATES ON THE SAME KIND OF LOGS ON OTHER RAILROADS IN FLORIDA.

SEABOARD AIR LINE

(7) The witness Abrams, who was then Commerce Agent of the Seaboard Air Line, submitted an exhibit showing a comparison of the various rates on logs in car loads reduced to cents per hundred pounds (Ex. 2, R. 234). He testified as follows (R. 434):

> "In column 1 is shown the so-called Cummer scale, which, it will be observed, is the lowest scale to be found and on the very lowest level and lower even than that prescribed by the Georgia Commission, but under suspension, as shown in column 12."

In 1915 rates were arranged in conference with the Railroad Commission of Florida, the representatives of the Seaboard Air Line Railway, and the Atlantic Coast Line. These rates represent Class P rates for a car of 40,000 pounds, then in effect, observing a minimum of $6.00 per car. They were made to induce the movements of timber from small tracts. The present equivalents of those rates over the Sea-

board Air Line are shown in Column 4 of Exhibit 2. In comparison with the Cummer scale, at 60 miles they are more than twice as high as the Cummer scale of rates; at 150 miles they are still somewhat more than twice as high. As compared with the interstate rates on the Atlantic Coast Line Railroad applicable between Alabama and Georgia points and between Florida and South Carolina points, the interstate rates are more than twice as high at 50 miles; also more than twice as high at 70 miles; and nearly three times as high at 170 miles. The Cummer rates are only about half as high as the rates prescribed by the Georgia Commission in 1925.

The witness testified (R. 436) that "by the comparisons I made I think they (the Cummer scale rates) are unduly low." The Cummer scale applicable to 25 miles is 1.71 cents, and under the interstate scale of the Atlantic Coast Line Railroad, for the same distance, 4 cents; at 75 miles the Cummer scale is 2.30 cents, and the interstate scale 6.50 cents; at 170 miles the Cummer scale is 3.70 cents, and the interstate scale 9.50 cents. The rate under the Cummer scale for 25 miles is 1.70 cents, and under the scale which has been fixed by the Georgia Commission intrastate in Georgia, for the same distance, 3.5 cents; for 75 miles the Cummer scale is 2.30 cents, and the Georgia rate 5.5 cents; at 100 miles the Cummer scale is 2.60 cents, and the Georgia rate 6 cents; at 170 miles the Cummer scale is 3.70 cents and the Georgia rate 8 cents. (The Georgia scale was fixed, as we have shown, in April, 1925, for use intrastate in Georgia, and was, at the time of the hearing, under suspension.)

The Seaboard Air Line operates about 1850 miles in Florida. In many instances its lines are substantially parallel with the Atlantic Coast Line, and the operating conditions are necessarily the same as those of the Atlantic Coast Line.

GEORGIA, SOUTHERN & FLORIDA RAILWAY

(8) The witness Potter (R. 450) in Exhibits 3, 4, 5, 6, 7 and 8 (beginning R. 237) makes comparisons of rates under the Cummer scale with those in effect over the Georgia, Southern & Florida Railway in Florida. The rates under the Cummer scale are applicable to cars of 50,000 pounds. The rates of the Georgia, Southern & Florida are applicable to cars of 30,000 pounds. At 50 miles the Cummer rate is 2.1 cents per hundred pounds, and the G. S. & F. rate 4.33 cents per hundred pounds; at 70 miles the Cummer scale rate is 2.3 cents, and the G. S. & F. rate is 5.0 cents; at 100 miles the Cummer scale rate is 2.6 cents, and the G. S. & F. rate 6 cents; at 120 miles the Cummer scale rate is 3.2 cents, and the G. S. & F. rate 6.66 cents.

Thus the rates for intrastate log transportation in Florida over the Georgia, Southern & Florida Railway are about twice as high as are the rates for the same kind of transportation in the same state over the Atlantic Coast Line Railroad.

Exhibit 5 (R. 239) is a comparison between the Cummer scale rates and the G. S. & F. interstate scale into Georgia. The disparity pointed out between the Cummer scale rates and the G. S. & F. interstate rates into Georgia is accentuated in this latter comparison. For instance, at 50 miles the Cummer scale rate is 2.1 cents, and the G. S. & F. Georgia interstate scale rate, 5.8 cents; at 100 miles the Cummer scale rate is 2.6 cents, and the G. S. & F. interstate scale, 8.9 cents; at 120 miles the Cummer scale rate is 3.2 cents, and the G. S. & F. Georgia interstate rate, 9.4 cents.

Exhibit No. 6 (R. 241) is a comparison between the Cummer scale rates and the rates of the G. S. & F. Railway inter-

state from Florida stations to Valdosta, Georgia, and from Georgia stations to Lake City, Florida. The disparity in the rates pointed out in the other two exhibits continues in varying degree but none the less very marked.

Exhibit No. 7 (R. 243) shows the G. S. & F. interstate scale from Florida stations to Valdosta, Georgia, and the A. C. L. interstate scale from Florida stations to Valdosta, Georgia, and the Cummer scale, and the rates used by the Southern Railway interstate. The Cummer scale rates are from only one-third to one-half of any of the other rates (the Cummer scale rates in this exhibit are those under column 3 which is headed "Rates sought by complainant from A. C. L. stations in Florida to Valdosta, Georgia").

Exhibit No. 8 (R. 245) compares rates on logs in car loads between the Atlantic Coast Line Railroad stations in Florida with rates between stations on the Southern Railway in various states, to-wit: Georgia, North Carolina, South Carolina and Alabama. The same striking disparity exists, and the Cummer scale rates are only a third to a half of the other corresponding rates.

CENTRAL OF GEORGIA RAILWAY

(9) The witness C. D. Chancellor, Assistant General Freight Agent of the Central of Georgia Railway Company, testified (R. 455) that "the Central of Georgia has only a short mileage in Florida." Its interest in the case was stated to be "the far reaching effect if the Florida rates (the Cummer scale) are extended into Georgia, the far reaching effect they may have on the Georgia rates intrastate, and also the Alabama rates, and the rates applicable from interstate points on the rails of the Central of Georgia."

The witness further said (R. 466):

> "The Central of Georgia Railway intervened in this proceeding because it considers the rates now maintained by the Atlantic Coast Line Railroad for intrastate application on logs within the State of Florida to be unduly and unreasonably low, and detrimental to its interests. If the very low rates in Florida are continued, and extended for application from Florida into Georgia, it is felt that these rates would possibly influence the Georgia Public Service Commission in prescribing rates for general application throughout the State of Georgia, and likewise would possibly influence the Alabama Public Service Commission in reopening the question of intrastate rates within the State of Alabama, with a view to making lower rates than those now in effect, which were prescribed by its order of April 29, 1925, docket 4136.
>
> In other words, it is the far reaching effect that the continuation of the low Florida rates may have on the revenue of this company with which we are concerned.
>
> It is my understanding that the presence of these Florida intrastate rates was seriously urged by the Georgia Commission as a reason for not enforcing its decision as to log rates in the State of Georgia."

COMPARISON OF THE RATES ON LOGS UNDER THE CUMMER SCALE WITH THE RATES ON OTHER COMMODITIES.

(10) Exhibit 18 by the witness Perrin (R. 279) is a comparison of the per car revenue on logs interstate and in Florida intrastate over the Atlantic Coast Line with the per car revenue on other commodities moving between the Atlantic Coast Line stations in Georgia, on the one hand, and, on the other hand, stations on the Atlantic Coast Line in Florida north of High Springs.

The witness says (R. 481):

> "Brick and road-building materials constitute an unusually heavy character of traffic, and I know of no traffic on the Atlantic Coast Line, other than logs, that is handled on a lower basis of rates."

This Exhibit 18 shows that at 50 miles the Cummer scale of rates is only about 40 per cent. of the corresponding interstate scale; that it produces only about one-third of the revenue per car which is produced by brick; and an even less percentage of the revenue from a car of gravel or sand, or lime or cement.

The comparison continues in about the same ratio throughout the various distances up to one hundred and seventy (170) miles. Above one hundred and seventy miles the scales of rates draw much more nearly together. For instance, at 170 miles the interstate scale is shown to be 9.5 cents per hundred on logs, and the Cummer scale is 3.70 cents per hundred. At 180 miles the interstate scale is shown to be 9.5 cents (the same as for 170 miles) and the intrastate scale is 8.33 cents. The Cummer scale ends at 170 miles.

At Exhibit 22 (R. 287) the witness Perrin compares the tonnage, average distances hauled, and revenue results from the transportation of various commodities of the lowest transportation characteristics moved on the Atlantic Coast Line Railroad during the month of May, 1926. These include cotton seed, cotton seed hulls, clay, gravel and sand, stone, asphalt, salt, phosphate rock, cord wood, cross ties, cement, brick—artificial stone, lime—plaster, fertilizer, logs. This shows that 168,756 tons of logs moved; that this made 7.26 per cent. of all tonnage. The logs produced $121,015.66 of revenue, which is 2.05 per cent. of all freight

revenues. The per ton revenue was 72 cents, which was the lowest per ton revenue of any of the commodities mentioned. The average haul was 109 miles. The revenue per ton mile was .0066. The relation of percentage of all freight revenue to percentage of all tonnage was 28.4 per cent. At page 482 the witness deals with this, saying:

> "The purpose of this statement is to indicate the low earnings on logs as compared with any of the other commodities, bearing in mind that all of these commodities constitute the lowest grade of traffic that we handle. The comparison that I desire to show is concentrated in the last column, which shows, for instance, as to cottonseed that the percentage of all freight revenue is 61½ per cent. of the percentage of all tonnage; as to gravel and sand, the statement shows that the percentage of all freight revenue is 34½ per cent. of the percentage of all tonnage. The statement shows that as to fertilizer, the percentage of all freight revenue is 83.8 per cent. of the percentage of all tonnage; as to logs it shows that the percentage of all freight revenue is 28.4 per cent. of the percentage of all tonnage."

The witness says (R. 483):

> "This statement is merely one method of substantiating our statement that under the present level of rates, logs are the lowest revenue producers of all of our traffic."

He then states:

> "We are convinced that our log rates, as a whole, have become inordinately low and that the revenues derived from the transportation of logs as related to the service performed are so low as to suggest a doubt about fairness to shippers of other classes of traffic. In making this statement I have in mind not only the intrastate log rates in Florida, but the log rates applicable generally on the Atlantic Coast Line.

"The purpose of the testimony that I have given up to this time is to show that, intrinsically, our interstate mileage scale on logs is reasonably low, and that it would be out of the question to substitute therefor any scale, even approximating our Florida intrastate scale, for distances up to 170 miles."

The same witness testified (R. 507, 508):

"There is nothing in the characteristics of logs as freight traffic that would justify any lower level of rates on logs than on sand and gravel, either as to the transportation revenue results, or from the value or claim damage standpoint or any other transportation features that you might consider. * * * As to whether the rates on logs should be lower or higher than the rates on these other commodities, they are all cheap, they are all heavy, they are all without claim risks, there is no condition that I know of, with the possible exception of cement, which might have a higher value that would probably justify a lower rate than logs. * * * Logs should carry higher rates than sand and gravel. * * * There is more risk in the handling of logs than there is on these other commodities. The log traffic is to a certain extent dangerous. * * * There are many logs that fall off trains as they go along, and all that is dangerous."

COMPARISON OF THE RATES ON LOGS UNDER THE CUMMER SCALE WITH THE RATES ON BRICK.

(11) A carload of logs moving from Florida interstate 50 miles will carry a rate of 5 cents per hundred pounds; logs moving in Florida intrastate under the Cummer scale will carry 2.10 cents; while brick moving from Georgia to Florida interstate will carry 5 cents; sand and gravel will carry 4.30 cents; lime, 7.90 cents; cement, 8.45 cents. The revenue on a car of logs weighing 55,000 pounds moving interstate 50

miles from Florida would be $27.50. The revenue from the same car of the same loading moving 50 miles intrastate under the Cummer scale would be $11.55. The revenue on a car of brick weighing 65,580 pounds from Florida to Georgia would be $33.29; on gravel and sand weighing 92,540 pounds, $39.79; on lime weighing 49,020 pounds, $38.73; and on cement weighing 70,740 pounds, $59.78. The Florida intrastate movement car would produce a revenue much less than one-half of the interstate movement of the same car for the same distance, and would produce only about one-third of the revenue that would have been produced on the heavier carload of brick, substantially less than one-third of the revenue on the much heavier carload of gravel and sand; substantially less than the carload of lime, which is not so heavy, and less than one-fifth of the revenue on the carload of cement, which is about 15,000 pounds heavier than a carload of lumber. The same comparisons continue with approximately the same disparities. (R. 270, 280, 290.)

Exhibit 19 (R. 282) by the witness Perrin is a comparison of the per car revenue on logs moving over the Atlantic Coast Line interstate and in Florida intrastate with the per car revenue on other commodities moving intrastate in Georgia. This exhibit shows that a car of logs weighing 55,000 pounds and moving 50 miles intrastate in Florida under the Cummer scale would produce $11.55 of revenue, and the Georgia intrastate revenue on brick, gravel, sand, lime, and cement would be $33.29 for brick, $37.02 for gravel, $32.39 for sand, $36.03 for lime, $65.40 for cement; and the rates and revenues applicable to other distances show the same kind of disparity and discrimination.

Exhibit 20 (R. 284) by the witness Perrin compares the per car revenue on logs moving over the Atlantic Coast Line interstate and Florida intrastate with the per car revenue of other commodities moving intrastate in Florida. At 50 miles a Florida intrastate log car of 50,000 pounds would produce $11.55; a car of brick, $37.75; a car of limestone, $41.64; a car of sand, $38.59; a car of lime, $44.12; a car of cement, $67.91. All of those cars are heavier than a car of logs except a car of lime, which is 49,020 pounds. The same kind of disparity between these rates continues for other distances.

COMPARISON OF THE PERCENTAGE RELATIONSHIP THE CUMMER SCALE RATES ON LOGS BEAR TO LUMBER RATES ORDERED BY THE INTERSTATE COMMERCE COMMISSION IN THE MERIDIAN CASE (60 I. C. C. 5) AND ALSO TO BASIC MILEAGE SCALE APPLIED ON LUMBER BETWEEN SOUTHEASTERN AND CAROLINA TERRITORIES.

(11a) The Interstate Commerce Commission in the case of Meridian Traffic Bureau vs. Southern Railway Co., 60 I. C. C. 5, prescribed rates on lumber. We have seen that it takes about three cars of logs to make one car of finished product, lumber. At 50 miles the rate on lumber prescribed by the Commission in the Meridian case is 9 cents. The basic scale of lumber rates between Southeastern and Carolina territories is 8.5 cents. The Atlantic Coast Line interstate rate on logs is 5 cents. The percentage relationship which the Atlantic Coast Line Railroad interstate log rates bear to the lumber rates under the Meridian scale at 50 miles is 55.6 per cent., and under basic scale of lumber applied between Southeastern and Carolina territory is 58.9 per cent. This relation-

ship continues, varying slightly, through other brackets of distance. (Exhibit 21, R. 286.)

The witness Perrin testified as to this exhibit (R. 482):

> "Perhaps it will be fair to say that the exhibit shows that the Atlantic Coast Line interstate log rates are about 55 per cent. of the lumber rates to Meridian and about 60 per cent. of the lumber rates under the carriers' basic scale. The log rates heretofore prescribed by the State commissions in Florida and Georgia have been 60 per cent. of the rates prescribed on lumber. I know of no instances where a lower percentage relationship has been adopted. In South Carolina the Railroad Commission prescribes on logs 80 per cent. of the lumber rates."

SOME OF THE FINDINGS OF THE COMMISSION

The Commission said (R. 25):

> "It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory. The rate for 160 miles yields but 4.25 mills a ton-mile, and, based on a lading of 60,200 pounds, 12.8 cents a car-mile. They are approximately one-half of the rates prescribed in Rates on Chert, Clay, Sand, and Gravel, 122 I. C. C. 133, on sand and gravel in the Southeast and less than one-half of the rates prescribed in the supplemental report in that case, 140 I. C. C. 85, to points in Florida south of the Jacksonville-River Junction line of the Seaboard Air Line. As stated in the original report in that case, sand and gravel are of unusual low value, it being doubtful whether any traffic moves which is worth less at point of production, load very heavily, and normally move in considerable volume without unusual switching operations at either end and without anything in the nature of special services. The evidence is not convincing that logs could

not or would not move from Florida to Georgia if the interstate rates and the Florida intrastate rates were on the same level."

The facts which we have shown were proved before the Commission amply sustain these findings.

We submit that the facts to which we have referred, which are wholly uncontradicted, make "substantial evidence" justifying the finding of the Commission that:

> "The Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce" (R. 26).

We further submit these facts make substantial evidence quite ample to justify the finding of the Commission that:

> "Whether the aforesaid rates pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by defendant under substantially similar circumstances and conditions" (R. 26).

THE EXTENT OF DISCRIMINATION WHICH WILL BE WORKED BY THE CONTINUANCE OF THE CUMMER SCALE OF RATES.

(12) That the extent of the discrimination, which will be worked by the continuance of the Cummer scale of rates, is very great, as shown by the facts already set out. As, for instance, the Brooks-Scanlon Corporation has 1,027,432,000

feet of pine and cypress, equivalent to 186,800 car loads (ex. 41, R. 379). The Cummer Cypress Company has timber which, when logged, will amount to 127,158,000 feet, which is equivalent to 28,257 car loads of logs (R. 313, 320). The Wilson Cypress Company has 250,000 feet of cypress which, when logged, will produce 59,529 car loads. The Putnam Lumber Company has more than one billion feet of pine and cypress (R. 596).

The aggregate of the differences in revenue which is produced to the carrier by applying the Cummer scale of rates and the rates which the Commission has found to be reasonable is very great, enough to be not only substantial, but sufficient to impose a staggering burden.

UNDUE DISCRIMINATION WHICH THE CUMMER SCALE WORKS AGAINST THE GEORGIA MANUFACTURER OF LUMBER IN THE MARKETS OF CONSUMPTION.

(13) In making these calculations 150 pounds of logs is treated as equivalent to 50 pounds of lumber, and the calculation is made upon the application of the published rate tariffs and schedules, and the rates shown in Exhibit 45 (R. 384). If the logs are brought into Jacksonville over the Atlantic Coast Line, a distance of 150 miles from the point of origin in Florida (that being about the distance of the greater shipments), the freight rate will be $51.00. If those logs are manufactured into lumber and produce 50,000 pounds and are sold in Portland, Maine (this is one of the points of market testified to) (R. 574), the freight will be $225.00. Aggregating those two charges, the freights paid on the logs from forest to mills, plus the freight on the lum-

ber from the mills to market, will be $276.00. If the logs which were used in manufacturing the same lumber had moved on the interstate rate to a manufacturing point in South Georgia and had been shipped to the same destination, the aggregate of the two freight charges would have been $337.50, and the Georgia manufacturer would have been at a disadvantage of $61.50 per car in offering his lumber in the market at Portland, Maine. If the lumber had been offered in Washington, Baltimore, Philadelphia, Jersey City, or Boston, the discrimination against the Georgia manufacturer would have been exactly the same. Of course, these circumstances would work a discrimination against the Georgia manufacturer in favor of the Florida manufacturer in any market in which they might compete. There was no denial in the record that these facts gave to the Florida shipper an advantage. The principal market for cypress lumber is in the Northeast Atlantic from Baltimore to Portland, Maine (R. 574) (R. 604).

The General Manager of the Wilson Cypress Company, testified (R. 574):

> "We meet very little competition from Georgia mills."

The same witness testified (R. 582):

> "If we enjoy a rate a third of what our competitor pays, we have an advantage over him in the market."

If there were no more, this would seem to amply justify the Commission's finding of preference, prejudice and discrimination. The extent of the preference, prejudice and discrimination we have undertaken to show. The question then comes, how much discrimination is necessary to give the favored competitor monopoly of the market and to drive the unfavored competitor out of the market?

The President of the Putnam Lumber Company testified (R. 615):

> "I don't think that the output of the Bray Lumber Company finds a market in the same territory. They sell most of theirs to the railroads that are right there, I understand; they don't ship the same people we do; *they could not do it because we have ten or twelve dollars a thousand advantage over them.*"

At page 618 the witness shows that this difference is due to the advantage of water rates. The Bray Lumber Company is located at Valdosta, Georgia.

At page 620 the witness, speaking of the Georgia manufacturer, Jackson, who operated at Valdosta, said:

> "Now if he tried to ship lumber into Boston or New York or Portland, Maine, against our nine-dollar man, he would be lost, he would have twelve to fifteen dollars arbitrary to overcome."

At page 621, in the same connection, the witness said:

> "That means a lot to a mill man."

He also testifies (R. 621) that his competition in New England is with the Pacific and Gulf mills.

We thus establish that ten or twelve dollars advantage per car in freight rates is enough to give one competitor the market and drive the unfavored competitor out of the market. We then see that the advantage worked by the Cummer scale is a great deal more than ten or twelve dollars; that in great markets to be found in the Eastern Seaboard cities, which have been mentioned, the advantage is more than five times twelve dollars per car, or $61.50. We then see that there is no competition in these Eastern cities from the Geor-

gia mills, and we find in the testimony of the Florida mill men the reason for this lack of competition; and one of them was able to testify that "We never hear of them any more than if they were not on the face of the earth" (R. 605). This result was attributed by the witness to the outgoing rate advantage. It seems to be quite clear that an incoming rate advantage greater than the outgoing rate advantage would also have the same kind of effect.

THE TERRITORIAL EXTENT OF THE INVESTIGATION OF THE LOG SITUATION IN FLORIDA.

(14) The record shows that Brooks-Scanlon Corporation owned 460,000 acres in Taylor, Jefferson, Madison, Dixie, LaFayette, Alachua, and Wakulla Counties. Those counties cover a large part of the northwestern portion of the peninsula of Florida and run well towards the east coast. These lands contain over a billion feet of timber (R. 657 and Ex. 41, R. 378). The Putnam Lumber Company owned large tracts in Dixie, Taylor, LaFayette, Volusia and Flagler Counties. Volusia and Flagler Counties are on the east coast south of St. Augustine. These holdings have something over a billion feet of pine and cypress (R. 596 and Ex. 35, R. 360). Wilson Cypress Company has headquarters at Palatka, Florida. Its timber is located in LaFayette, Dixie and Taylor Counties (R. 570) and it has approximately 250 million feet of timber (R. 572 and Ex. 32, R. 336). The Cummer Lumber Company and the Cummer Cypress Company own large tracts of land, having a plant at Lacoochee, Florida, which is in Pasco County on the west coast about midway the state. It has one tract of timber adjacent to that plant containing about 268 million feet (R. 569); it has another tract located near Otter Creek (Levy County) containing about 23 million feet

(R. 569); and one tract near Homosassa containing about 29,298,000 feet. Homosassa is in Citrus County on the west coast north of Pasco (R. 567). It also has another tract on the Withlacooche River containing about 74,860,000 feet of timber which will be shipped from Inverness to Lacoochee (R. 568). Inverness is in Citrus County. There are manufacturing plants at Eastport, which is near Jacksonville, at Milldale, which is near Jacksonville, at Palatka and at Lacoochee.

The Commission also investigated the condition at Lake Wales where a large mill is being established; this is in about the center of the peninsula; at Seers where another large mill is established; this is in the County of Hendry, far down in the southern part of the peninsula; at Sherman, which is on Lake Okeechobee in the southern part of the peninsula and near the east coast; and at Holopaw (the record does not show where that is located, but it is south of Tampa). There are large mills at all of these places (R. 608). "All of those mills have been built at the timber"(R. 608).

The witness Price, in his Exhibits Nos. 1 and 46, showed an investigation of a number of points in Florida, illustrating the discrimination. Those points include Hardeetown, Usher, Otter Creek, Lebanon, Tidewater, Steen, Dunnellon, Ladonia, Hernando, Inverness, Floral City, Pineola, Croom, Trilby, Dade City, and Lumberton. He also gave direct testimony in reference to them and to quite a number of other places (R. beginning p. 405). A number of other places were dealt with by Mr. Price in the above mentioned exhibits.

It must be remembered that the state rate condemned was applicable up to 170 miles on the Atlantic Coast Line in

Florida, whether that distance was in one part of the state or the other.

The places referred to and the many places in the more northern part of the State of Florida cover practically the entire state; and, realizing that each point of investigation carries with it the radius of 170 miles, it is easy to be seen that the conditions in the entire state were well investigated.

We attach hereto a map of Florida with Perry in Taylor County as the central point. It shows circles made with radii as long as 170 miles. These give illustrations of how far a shipment of logs will be transported under the scale prescribed by the Interstate Commerce Commission in this case for a given amount of money and how far the same amount of money under the Cummer scale will move the same logs. Under the Cummer scale a rate of 3.7 cents per hundred pounds of logs will pay for the carriage of the logs anywhere within the radius of 170 miles over the Atlantic Coast Line, while under the interstate scale, 3.5 cents will carry the same logs in a circle having a radius of only 30 miles. These circles when getting to a radius of 50 miles pass into the State of Georgia and, of course, go deeper into the State as the radii extend, while the Cummer scale of rates move in all directions described by these radii, so long as those movements are in Florida, and on the Atlantic Coast Line; they cease the moment the Georgia line is reached.

Logs moving under the Cummer scale while moving wholly within Florida will go many times further than if the same logs on the same cars and on the same company's rail moved at the same time into the State of Georgia. The conditions of traffic were found, as we have pointed out, by the Commission for the two movements to be substantially the same.

COST STUDIES

(15) A cost study was made by the witness J. Lowell White, Superintendent of Transportation of the Atlantic Coast Line Railroad Company (R. 522). This shows that the cost per car for handling this log traffic in the service performed for Brooks-Scanlon Corporation from Perry and Carbur to Eastport, Florida, was $19.13. (Perry and Carbur are in Taylor County, which is on the west coast; Eastport is a suburb of Jacksonville, which is on the east coast). This does not include taxes or equipment rentals. The average revenue per car is shown by the witness Perrin to be $20.47 (R. 522). The average haul from Perry and Carbur to Eastport and Milldale is 158 miles. This left $1.34 out of which was to be taken taxes and equipment rentals. The taxes were testified to be "not inconsequential" (R. 529). It would seem that this service was being performed under this testimony at an inconsequential net return even when taxes and equipment rentals were not considered. If those charges had been considered, in all probability it would have shown that the log rate produced no profit but a loss. The Florida Commission introduced a witness on cost, Pettijohn (R. 629). He estimates that there was a profit of $5.85 per car.

The Commission in its report says (R. 23):

> "Both cost studies are based on certain arbitrary assumptions and both are based on movements in trainloads from two points of origin to one destination. Neither can be accepted to show the approximate actual cost of transporting logs in single carloads intrastate throughout Florida. The record shows that while most of the Florida intrastate log traffic is in trainloads, there is a substantial movement over defendant's line in less than trainloads."

The Court in its opinion of March 22, 1929 (R. 169), referring to this cost evidence given by the witness for the Atlantic Coast Line and by the witness for the Florida Commission, said:

> "Certainly no other litigant could have known the facts better than they. In rejecting the conclusion of slight net income asserted by the witnesses, the Commission did not rule out the basic facts shown, but was at liberty to supplement them and construe them for itself, and make its own conclusion from them. * * * On the face of things the log rate is too low and likely to burden the carrier. The Commission expressly finds that it is obviously unremunerative. It is shown that the commerce in logs over the Coast Line system is and will continue to be very large and this item of its rates is therefore an important one."

The witness White (beginning at page 522 of the record, recalled, page 709, and in Exhibit 25, revised, beginning at page 294 and continuing into page 307) gave in detail the factors used in making his calculations. At page 299 there is a statement of each day's movements of this traffic, showing the number of train miles, the number of loaded cars, the number of empty cars, log car miles loaded, log car miles empty, other car miles, cab and idler car miles, and total car miles. This exhibit shows (R. 304) the various charges to direct and indirect items of expense; and in the form required by the Interstate Commerce Commission's accounting rules, it shows the charges to maintenance of way and structures, maintenance of equipment, traffic, transportation, and general charges. Some additional facts shown are:

(a) The rates to be applied.

(b) The distances of the movements (R. 470).

(c) The average number of cars of lumber in a train load (Ex. 29, 30).

(d) The service contracts governing the operation of the service (Ex. 31, 33, 34).

(e) The amount of freight paid, and the rate per thousand feet on the earnings per car (R. 360).

(f) A description of the work done by the railroad company at the yards, including almost every conceivable detail of service (R. 591).

(g) The amount of wages actually paid (R. 523).

(h) Cost of fuel and supplies.

(i) Cost of hostling and turning the engines.

(j) Cost of operating the type of yard engine used in the service (R. 524).

(k) The cost of the engines (R. 524).

(l) The time of each trip (R. 524).

(m) The assignment of five locomotives to perform the service (R. 524).

(n) The rate of depreciation on those engines.

(o) The maintenance and equipment of the locomotives.

(p) The direct and indirect charges (R. 525).

These facts would appear to present everything necessary for the ascertainment by an accountant of the cost of rendering this service. The difference between the accountants for the Florida Commission and for the Atlantic Coast Line is shown at Exhibit 39 (R. 271), and this was before the Commission. The Commission's statement to the effect that "both cost studies are based on certain arbitrary assumptions" appears to have been sustained in that "both are based on movements in train loads from two points of origin to one of destination" and in that the Commission found "there is a substantial movement over defendant's lines in less than train

loads." There is no dispute as to either of those facts, and, of course, those facts tend to increase the cost of the movement, and those facts were clearly before the Commission. There is nothing in the Commission's report to justify the assumption drawn by the appellants that the Commission went out of the record to get any fact in reference to the cost of these movements. The Commission had the right to apply its experience and knowledge of traffic and accounting matters to the facts proved in order to ascertain the value of those facts. There is nothing in the opinion of the court below which suggests that the supplementation referred to in that opinion meant that the Commission had gone out of the record. When the court referred to the fact that the Commission "was at liberty to supplement them (cost studies) and construe them for itself and make its own conclusion from them," of course, it was meant that the Commission was at liberty to supplement those studies from the facts in the record.

The cost studies of the movement under these rates are after all only one element in determining whether the rates were or were not reasonable. There was ample evidence aside from this to show to the Commission that the rates were wholly unreasonable.

At page 25 of the record, the Commission in its report says:

> "It is manifest, we believe, that the intrastate rates assailed, which on the average are less than half of the proposed interstate rates, are less than reasonably compensatory."

TIMBER IN THE NORTHERN PART OF FLORIDA AVAILABLE FOR USE IN GEORGIA.

(16) Frequently in the record the representatives of the large mills have testified that there was no timber available in North Florida which might be used in the South Georgia mills because that timber was owned by the large mills.

The Commission held in its report (R. 25) that:

> "The evidence is not convincing that logs could not or would not move from Florida to Georgia if the interstate rates and the Florida intrastate rates were on the same level."

The Court in its first opinion, noticing this contention, said (R. 49):

> "This contention is well supported so far as concerns large tracts of timber, logs from which would move in train loads, as do most of those in Florida now handled by the Atlantic Coast Line Railroad. But the rate assailed is not a train load but a car-load rate, and the evidence abundantly justified the conclusion that there is an indefinite quantity of what is called 'scattered timber,' not yet cut, in north Florida, which is not owned by Florida mills and which the Commission could find would be as likely to move to Georgia as to Florida points if a rate parity were afforded."

Supporting this finding of the Commission and of the Court, we quote some of the evidence adduced before the Commission:

The witness Giddens testified (R. 532, 533):

> "I am interested in the manufacture of logs at Valdosta, Ga., into various forms of lumber, and come into direct competition with Florida manufacturers of

logs. The demand for logs for my mill carries me into Florida for distances up to 170 miles on the Atlantic Coast Line Railroad. I cannot draw logs from the distance and on the railroad as just referred to at the present time on account of the rates. The rates from these points in Florida to Valdosta, Ga., are higher than I can afford to pay. If the rates complained of in this case, maintained by the Atlantic Coast Line Railroad between points in Florida up to 170 miles, were to be extended to Valdosta, Georgia, that would relieve this condition that prohibits me from drawing logs from Florida at this time. I had in mind one or more locations of logs that I could buy if the rates of which I complain were different; that is, if I were placed on an equal basis with Florida manufacturers."

The witness testified that the logs around Valdosta are "mostly cut out".

He then testified (R. 534):

"There is timber that I can buy within 170 miles of Valdosta on the Atlantic Coast Line Railroad that I want to buy and expect to buy if we can get a rate."

The witness was then asked to locate this timber and he says that is an unfair question, and then adds (R. 534):

"At the hearing that you held in Valdosta, the same question was asked Mr. Jackson, and he and I were figuring on a tract of timber. * * * and I would say in just a few days after the hearing that that tract of timber was sold. I know something about it. The location of that timber was revealed by Mr. Jackson under the same circumstances as obtain here. And the lumber was bought in the next two weeks."

The tract of timber referred to was said to contain 190,000,000 feet (R. 422). The evidence admits that this was sold a few days after the closing of the Valdosta hearing.

It was contended by appellants that the negotiations were pending for the purchase of this land before the Valdosta hearing. There is considerable evidence to the effect that there was no timber in North Florida which could be bought; that the timber was in the hands of large mill owners (R. 578, 579, 585, 602). In saying that there are no large timber tracts in North Florida, these witnesses did not mean to exclude small tracts. For instance, one witness (R. 602) confines his statement to merchantable tracts and described merchantable tracts as those containing "anywhere from six or seven million feet up". The same witness says (R. 602):

> "There is merchantable timber within 150 miles of the Georgia line, but it is not available for sale to or purchase by Georgia mill operators because it is already owned by these saw mill operators who have big investments in saw mill properties."

Another witness states (R. 664) that he does not mean to say that "every one of the trees in this area in Florida is owned by those companies (the large companies), not at all. Some farms have a few acres of some kind of timber."

The witness Jackson testified (R. 446) that he contemplated buying timber at Cross City, Florida, small tracts, from farmers, but concluded not to purchase; the freight rate was too high and that the rate prevented him from investigating other tracts.

The witness Simmons testifies that there is quite a lot of "scattered stuff like we use" in Florida south of Thomasville, Georgia, and that this would be bought if they had a reasonable log rate from Florida (R. 432).

The witness Davis (R. 544, et seq.) testified that he was in business at Climax, Georgia, and he had hardwood timber

offered to him, standing or loaded on cars in Florida, and because of the rate had to abandon the purchase and also abandon the idea of building another hardwood mill; that the timber was within 170 miles of Climax, in the State of Florida, on the Atlantic Coast Line; that if the Florida scales of rates were extended to Georgia he would be in position to buy certain grades of logs in Florida, and the reason he doesn't buy them now is because of the low rate in Florida as compared with the high rate between Florida and Georgia.

The witness McCain, cruiser for Brooks-Scanlon Corporation, testified (R. 690) that "there are scattered small pieces (timber lands) owned by settlers or farmers, which we speak of as odds and ends," located on the Atlantic Coast Line in Northern Florida. He also speaks of other timber lands lying next to the large holdings. This witness identified Exhibit 44, which is a map of this part of Florida, giving some description of the timber therein.

The Atlantic Coast Line's line south of Thomasville, Georgia, is what is known as the Perry branch.

We submit that this evidence shows two things: First, that the Commission and the Court were amply justified in the conclusion that there was timber in North Florida which, when cut into logs, would move into Georgia upon an equalized rate; and, second, that the unduly low and unreasonable rate in Florida, which would apply only on intrastate traffic moving on points of the Atlantic Coast Line, was having its natural effect, which burdened the movement of interstate commerce to such an extent as to be almost startling and to make a very great imposition on interstate commerce.

These great tracts of timber in Florida near the Georgia line sent their product in accordance with the rate. That is,

those logs moved, as they naturally should, on the lowest rate, and that carried them not into Georgia but into Florida, and had the effect of putting an economic wall between the Florida forests and the Georgia mills as completely as though it were some great natural barrier. This seems to be a complete and perfect illustration that the rates had accomplished and were accomplishing the wrong which the law undertakes to prohibit.

RATES IN SOUTH FLORIDA

(17) By South Florida is meant that part of the state south of the line running through Jacksonville, Gainesville, Burnett's Lake and High Springs, Florida. We have pointed out that the rates below this line in Florida are generally higher than the rates above it (R. 487-8-9). The South Florida interstate rate is shown at Exhibit No. 11 (R. 255). Exhibit No. 23 carries forward this comparison.

In Florida the Cummer scale applied on intrastate shipments whether in North Florida or in South Florida. After the 170-mile distance had been passed and the Cummer scale ended, then the Florida Class P rates applied. At 50 miles the South Florida interstate scale is 7.10 cents per hundred pounds; while the Cummer scale is 2.10 cents. At 100 miles the South Florida interstate scale is 8.96 cents; and the Cummer scale 2.60 cents. At 150 miles the South Florida interstate scale is 10.40 cents; and the Cummer scale 3.40 cents. At 170 miles the South Florida interstate scale is 10.80 cents; and the Cummer scale 3.70 cents. Then the Cummer scale ends. At 180 miles the South Florida interstate scale is 11.30 cents; and the Florida intrastate scale 8.33 cents. The difference in rates below this line and south of the line has been

recognized by the Commission, as pointed out by the witness Perrin (R. 489) where he cites:

> Florida Fruit & Vegetable Shippers Protective Ass'n vs. Atlantic Coast Line Railroad, 14 I. C. C. 476, and subsequent cases of the same nature in 17 I. C. C. 552, 22 I. C. C. 11;
>
> Florida Growers & Shippers League vs. Alabama & Vicksburg Railway Co., 43 I. C. C. 595;
>
> Dawson Produce Co. vs. Atlantic Coast Line, 49 I. C. C. 291.

At page 489 he says:

> "I may say generally that in these decisions, while they bore upon the principle that the rates to and from Florida should and might be made on Jacksonville combination, of course, the effect of those decisions was to make the rates higher than customary in the south, and the Commission, as I have previously stated, has recognized different Florida operating conditions."

The discrimination worked by the Cummer scale in North Florida, therefore, greatly increased in South Florida. The insufficiency of the rates and the unreasonableness of them in North Florida became all the greater in South Florida.

The differences in the conditions in South Florida led the witness Perrin (R. 486) to exclude that territory from his expression of willingness to adopt, for interstate application throughout the length of the line of the Atlantic Coast Line, the same rates as are applicable in the State of Alabama.

SIMILARITY OF CIRCUMSTANCES AND CONDITIONS

(18) The interstate and intrastate transportation services involved in this matter are performed by the defendant under

substantially similar circumstances and conditions. The Commission so found (R. 26). This finding is amply supported by the evidence. It was the discrimination worked against the Georgia shippers by the Florida intrastate rates that brought about the filing of the Georgia Commission's petition before the Interstate Commerce Commission (witness Price R. 402, 403). The Georgia Commission had proposed to increase its own intrastate rates and met with complaints from the Georgia shippers that this increase would drive them out of business because of the competitive Florida condition (R. 403).

The witness Simmons (R. 427) speaks of the line between Florida and Georgia as an "imaginary" line. The witness Price, rate expert of the Georgia Commission, testified that if the Cummer scale is a reasonable one for application intrastate in Florida, then he insists that it is a reasonable scale for application interstate from Florida to Georgia (R. 707). He repeats in substance this statement at page 708.

The witness Perrin (R. 483) testifies:

> "I believe that there is a situation immediately around us that will necessitate the fixing of a uniform scale of rates on the Atlantic Coast Line railroad less than might reasonably be expected and made independent of log rates elsewhere that may have been higher under the circumstances and conditions substantially different from those existing in our territory."

At page 477 the same witness testifies:

> "The Atlantic Coast Line serves the states of Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama, and operates through those parts of practically all of these states in which the tonnage of logs is heaviest, and if anything approaching the Cummer scale

should be made the measure of the reasonableness of our log rates generally, the result from a revenue standpoint, could not be justified,"

Exhibit 17, R. 275, shows the scale of rates on logs prior to August 15, 1929, and "the present interstate scale uniformly applicable since that date." This exhibit shows the Alabama interstate scale, the Georgia interstate scale, the general interstate scale, the average of these scales, and the then present interstate scale.

Exhibits 18, 19, 20, and 22 give various comparisons of the Florida log rates with other rates, and the relation of the Florida log rates to rates established in other cases, such as the Meridian case (60 I. C. C. 5).

Exhibit 22 shows the tonnage, average distances hauled, revenue results, and percentages on logs and other commodities of like transportation characteristics which moved over the Atlantic Coast Line railroad in the month of May, 1926.

The intrastate scale on logs in Alabama is compared with scales prescribed by the Interstate Commission in the Meridian case (60 I. C. C. 5), and in the Pierpont case (59 I. C. C. 81), and in the 62nd I. C. C. 69, with the intrastate scale fixed by the Georgia Commission by its order of April 15, 1925.

These comparisons are discussed by the witness at page 483 et seq. At page 483 the same witness testifies:

> "It is the contention of the Atlantic Coast Line Railroad that its interstate mileage scale on logs represents a level of rates none too high, and that if all of our log traffic could be handled at the rates contained in this interstate mileage scale the revenues obtained from the log traffic would be in much fairer proportion to the revenues obtained from other classes of traffic."

That there is need of uniformity of rates on logs in this territory is shown at pages, 495, 496, and 516.

That the whole inquiry was a territorial one is shown throughout the record, and that this witness has testified as to territorial conditions (R. 507, 508).

At page 516 the same witness testifies:

> "We think it would be unfortunate to destroy uniformity by not adopting for interstate application from South Carolina to Georgia, a scale that differs only in minor details from the Alabama Commission scale, which is already in effect, particularly in view of the fact that under the scale that has been ordered by the Commission in these South Carolina cases, we would get that uniformity by making reductions for three blocks of distances, and making increases for three blocks of distances of one-half cent, and reduction of four blocks of distances of one-half cent."

He then testifies as to the effect of this on the traffic in Alabama, South Carolina, North Carolina, and Georgia.

The record shows no testimony of the dissimilarity of transportation conditions in North Florida as compared with those in Georgia. The Commission fixed in this proceeding interstate rates on logs from northern Florida points to Georgia points, which rates it declared to be reasonable. The divergence between those rates and the Cummer scale rates, which are condemned in this proceeding, has been pointed out, and it is extreme.

We must remember that the Commission is a tribunal not only appointed by law, but informed by experience, and that it is entitled to use that experience and its "knowledge of

conditions and environment and of transportation relations in weighing evidence."

See Illinois Central R. R. vs. I.C.C., 206 U. S. 441, 454.

The rates used in making comparisons were rates on the same commodity moving in the same territory, as for instance, logs moving over the Seaboard Air Line Railway and the Georgia, Southern & Florida Railway; and rates on the same commodity in the immediate adjoining territory, such as rates on logs in Georgia and Alabama. They were rates on commodities having similar transportation qualities moving not only in the same territory, but over the same rails, such as brick, lime, stone and cement moving over the lines of the Atlantic Coast Line in Florida and over the lines of the Seaboard Air Line in Florida, and on the same commodities moving in joint territory—Georgia, Alabama, etc. Comparisons were made against rates on the same commodity moving in interstate commerce from the same territory, which rates were prescribed by the Commission in this particular hearing, to-wit, interstate rates on logs moving from North Florida points into Georgia, and the rates made by the Interstate Commission on the same commodity moving to Georgia and Alabama, and between South Carolina and Florida, and other places. Those rates previously established by the Commission and presently established by it became proper standards, fully recognized as proper standards by this Court in Louisville & Nashville R. R. vs. United States, 238 U. S. 1, 15, from which we quote:

> "Giving the widest possible effect to the fact that mere comparison between rates does not necessarily tend to establish the reasonableness of either, it is still true that, when one of many rates is found to be higher than all others, there may rise a presumption that the single rate

> is high. And when to that is added the fact that some of the comparative and lower rates had been prescribed by the Commission, there was at least a *prima facie* standard which, after allowing for dissimilarity in conditions, might be used along with all the other evidence in order to test the reasonableness of the Nashville rate."

Comparisons of rates have been used by the Commission as a standard of reasonableness in an untold number of cases. Some of these are noted in Volume 2, Consolidated Digest of Decisions under Interstate Commerce Act, by Lust, at page 1569, and in Volume 10 of the same work, beginning at page 879.

The log rates under the Cummer scale as compared with the other log rates on the Seaboard Air Line, the Georgia, Southern & Florida, and the rates for other commodities moving in fairly close proximity to the Atlantic Coast Line, show that the Cummer scale rates are so low as to be thoroughly unreasonable. Certainly there was sufficient evidence to justify the finding that the rates were unreasonable.

PART TWO

BRIEF OF THE LAW AND ARGUMENT

SYNOPSIS OF THE BRIEF OF THE LAW

I. The question involved is one of discrimination, and burden on Interstate Commerce and that is a question of fact *Page* 62

Virginian Ry. vs. U. S., 272 U. S. 658.

II. Finding by the Commission of unreasonable discrimination, being supported by substantial evidence, will not be reviewed by the Court. *Page* 63

Virginian Ry. vs. U. S., 272 U. S. 658;
Tagg Bros. & Moorhead vs. U. S., 74 L. Ed., 287, 295;
New England Divisions Case, 261 U. S. 184, 204.

III. Statute law to be applied. *Page* 64

Section 2 of the Act to Regulate Commerce;
Section 3 (1);
Section 13 (1), (2), (3), and (4);
Section 15 (1);
Section 15a (2), (3), (4), (5) and (6).

IV. First opinion of the District Court in this case. *Page* 71

V. Second opinion of the District Court in this case. *Page* 72

VI. The Interstate Commerce Commission has the power to enter the order which was entered in this case because the Florida intrastate rates (the Cummer scale of rates), which were supplanted by rates fixed by the Commission, were unduly preferential of intrastate shippers and unduly prejudicial against interstate shippers and shipments and against localities and against

interstate commerce, and unduly preferential of a particular description of traffic. *Page* 73

Sections of the Interstate Commerce Act above referred to; and
Minnesota Rate Cases, 230 U. S. 352;
Houston East & West Texas Ry. vs. U. S., 234 U. S. 342;
American Express Co. vs. Caldwell, 244 U. S. 617;
Wisconsin Railroad Comm. vs. C. B. & Q. R. R., 257 U. S. 563;
Illinois Central R. Co. vs. State Public Utilities Commission, 245 U. S. 493;
Colorado vs. U. S., 271 U. S. 152, 162;
Railroad Commission vs. Southern Pacific, 264 U. S. 331, 347;
Texas & Pacific Ry. Co. vs. Gulf, etc., Ry. Co., 270 U. S. 268, 277;
U. S. vs. Village of Hubbard, 266 U. S. 474;
Missouri Pacific R. R. vs. Boone, 270 U. S. 466.

VII. Congress has exclusive power to deal with the relation of inter and intrastate rates. *Page* 81

Shreveport Case, 234 U. S. 354;
Dayton-Goose Creek Ry. vs. U. S., 263 U. S. 456, 477.

VIII. The disadvantage at which the Cummer scale of rates placed the competitors of Florida manufacturers in the selling market constituted discrimination. *Page* 83

Swift & Co. vs. Georgia Northern Ry. Co., 115 I. C. C. 661;
City of Augusta vs. A. C. L. R. R., 113 I. C. C. 303;
Southwestern Milling Co. vs. A. T. & S. F. Ry., 118 I. C. C. 61;
Arkansas Jobbers & Manufacturers Ass'n vs. A. T. & S. F. Ry., 118 I. C. C. 238;
Blackshear Mfg. Co. vs. A. C. L. R. R. Co., 107 I. C. C. 538;

Consolidated Southwestern Cases, 123 I C. C. 200;
Salt Cases of 1923, 92 I. C. C. 388, 435;
New Mexico Corp. Comm. vs. A. T. & S. F. Ry., 93 I. C. C. 43;
Oklahoma Portland Cement Co. vs. A. & S. Ry., 93 I. C. C. 605;
Oklahoma Corp. Commission vs. A. & S. Ry., 98 I. C. C. 183, 200.

IX. This case is in principle very much like the Pullman Surcharge Cases from the Interstate Commerce Commission. *Page* 84

Surcharge for transportation of passengers in sleeping or parlor cars between points in the State of Alabama, 62 I. C. C. 153;
Surcharge for transportation of passengers in sleeping or parlor cars between points in the State of Georgia, 69 I. C. C. 623.

X. The issue of discrimination under Section 13 (4) was made by the pleadings in this matter before the Commission. *Page* 85

XI. The order of the Commission was not arbitrary because unsupported by the evidence. *Page* 87

XII. The Commission may enter any order which is necessary or desirable to remove unjust discrimination. *Page* 90

Section 13 (4) of the Act;
N. C. & St. L. Ry. Co. vs. State of Tennessee, 262 U. S. 318, 319.

I.

DISCRIMINATION

The question involved is one of discrimination, and discrimination is a matter of fact.

See:

Interstate Commerce Commission vs. D. L. & W. Railroad, 220 U. S. 235, 251;
Pennsylvania Company vs. U. S., 236 U. S. 351, 361;
Virginian Ry. vs. U. S., 272 U. S. 658;
Tagg Bros. & Moorhead vs. U. S., 74 L. Ed. 287, 295.

II.

FINDING BY THE COMMISSION OF UNREASONABLE DISCRIMINATION HAS BEEN SUPPORTED BY SUBSTANTIAL EVIDENCE AND WILL NOT BE REVIEWED BY THE COURT.

I. C. C. vs. D. L. & W. R. R., 220 U. S. 235;
Los Angeles Switching case, 234 U. S. 294, 311.

This Court in Virginian Ry. vs. United States, 272 U. S. 658, stated the rule as follows:

> "Whether a rate is unjustly discriminatory is a question on which the finding of the Interstate Commerce Commission supported by substantial evidence is conclusive, unless there has been some irregularity in the proceeding or some error in the application of rules of law."

At page 663 of the opinion the Court stated:

> "To consider the weight of the evidence before the Commission, the soundness of the reasoning by which its conclusions were reached, or whether the findings are consistent with those made by it in other cases, is beyond our province."

See also:

Western Paper Makers' Chemical Co. vs. U. S., 271 U. S. 268, 271;

Skinner & Eddy Corp'n vs. U. S., 249 U. S. 557, 562;
New England Division Case, 261 U. S. 184, 204;
Tagg Bros. & Moorhead vs. U. S., 74 L. Ed. 287, 295.

We have at some length given an analysis of the evidence offered before the Commission in this case. Practically all of that evidence is uncontradicted. The relation which the Cummer scale rates on logs bear to the rates on other commodities and on the same commodity moving over other lines in Florida and to the interstate rates moving out of Florida and to interstate rates in other comparable parts of the country, and to intrastate rates in other neighboring parts of the country, the quantity of the timber, and the extending of the movement are uncontradicted, and the evidence that the Cummer scale of rates is the lowest scale which the witnesses have been able to find anywhere is also uncontradicted. The fact that the Cummer scale of rates continues up to 170 miles, and then the same commodity moving for longer distances over the same routes and under the same circumstances takes a rate proportionately much greater, is also uncontradicted. These facts would appear not only to make substantial, but conclusive, evidence of the unjust preference of intrastate shipments and the unreasonable discrimination and prejudice against interstate shipments and interstate commerce.

III.

THE STATUTE LAW TO BE APPLIED

There are certain sections of the Interstate Commerce Act, parts of which are relevant to the decision of this case. They are:

(1) Section 2 of the Act, which is as follows:

"Section 2: That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful."

(2) The first paragraph of Section 3, which is as follows:

"Section 3 (1): That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

(3) Section 13, paragraphs 1, 2, 3, and 4, as follows:

"Section 13 (1): That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of

this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper."

"Section 13 (2): * * * The Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money."

"Section 13 (3): Whenever in any investigation under the provisions of this Act, or in any investigation

instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any state, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the state or states interested to be notified of the proceeding. The Commission may confer with the authorities of any state having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such state bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such state regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a state is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such state authorities in the enforcement of any provision of this Act."

"Section 13 (4): Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and the interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice, thereafter to be ob-

served, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any state or the decision or order of any state authority to the contrary notwithstanding."

(4) Section 15, paragraph 1, which is as follows:

"That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged or collected, by any common carrier or carriers subject to this Act for the transportation of * * * property * * * as defined in the first section of this Act, * * * is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged * * * and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect, any rate, fare or charge, for such transportation * * * other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be * * *."

(5) Section 15a, paragraphs 2, 3, 4, 5 and 6, as follows:

"Section 15a (2): In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management, and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. Provided, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country."

"Section 15a (3): The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation; *Provided*, That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which,

according to the accounting system prescribed by the Commission, are chargeable to capital account."

"Section 15a (4): For the purposes of this section. such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under section 19a of this Act, in so far as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value."

"Section 15a (5): Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess, as hereinafter prescribed, as trustee for, and shall pay it to, the United States."

"Section 15a (6): If, under the provisions of this section, any carrier, receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. For the purposes of this paragraph the value of the railway property and the net railway operating income of a group of carriers, which the Commission finds are under common control and management and are operated as a single system, shall be computed for the system as a whole, irrespective of the separate ownership and accounting returns of the various parts of such system. In the case of any carrier which has accepted the provisions of Section 209 of this amendatory Act the provisions of this paragraph shall not be applicable to the income for any period prior to September 1, 1920. The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4)."

IV.

FIRST OPINION OF THE DISTRICT COURT
(30 Fed. 2d, 116, R. 44)

The Court below in its first opinion rendered on the 17th of January, 1929 (30 Fed. 2d, 116, 118, R. 44), divided the contentions which were made against the validity of the order into four parts:

First: "Is the order within the lawful powers of the Commission?"

Second: "Is it within the issues sought to be investigated and made after full hearing of them?"

Third: "Is it arbitrary because unsupported by sufficient evidence?"

Fourth: Is the order broader than the evidence?

The Court found against each of these contentions, and found in the third division of the opinion (p. 120) as follows:

> "We find substantial evidence to sustain the conclusions of the Commission on all material points."

The Court in that opinion construed the order as being applicable to shipments originating in that part of Florida on the Coast Line "north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs" (p. 121, R. 50).

V.

SECOND OPINION OF THE DISTRICT COURT

The second opinion by the Court (31 Fed. 2d, 580, R. 167) was rendered March 22, 1929, after the Commission had ordered that its order of August 2, 1928, be "changed in language for the purpose of clarification as follows: In the fourth paragraph, substitute for 'within the State of Florida' the following: 'within and throughout the entire State of Florida, without exception'."

This removed what the Court had deemed to be an ambiguity in the first order (31 Fed. 2d, 581, R. 167). The Court then stated:

> "We have, therefore, to examine the record more closely, and see if a state-wide change of the rate is sustainable."

The Court found that "the evidence does not show any actual or potential interstate commerce in South Florida in such logs as are involved in this rate". It also found that there was no discrimination against shippers and localities and no undue discrimination against "the *particular* interstate commerce in such logs". The Court did find as to the South Florida shipments that there was a discrimination "against *general* interstate commerce". The Court also found that "the hearing was full, within the meaning of the statute, and the power of the Interstate Commerce Commission not abused" (p. 583, R. 170), and that the order was sustained by the evidence "on the ground that the former State rate was an undue discrimination against general interstate commerce over the Coast Line Railroad" (R. 169).

No question was raised in the Court below as to the constitutionality of Section 13 (4) (R. 46). The Court in noticing this (30 Fed. 2d, 118) said:

> "Such an attack would probably be sufficiently met by what was said in the suit of Wisconsin Railroad Commission vs. C. B. & Q. Railroad, 257 U. S. 563" (R. 46.)

VI.

THE POWER OF THE COMMISSION TO PASS THE ORDER.

It would seem that, under the decisions of this Court, beginning especially with the Minnesota Rate Cases, 230 U. S. 352 (in fact beginning with Gibbons vs. Ogden, 9 Wheat. 1), there should be no doubt as to the jurisdiction of the Commission:

See:

Houston East & West Texas Ry. vs. United States, 234 U. S. 342;
American Express Co. vs. Caldwell, 244 U. S. 617;
Wisconsin Railroad Commission vs. C. B. & Q. R. R., 257 U. S. 563;
Illinois Central R. Co. vs. State Public Utilities Commission, 245 U. S. 493;
New York vs. United States, 257 U. S. 591.

The finding of the Commission, as is pointed out in the Court below (R. 45, 30 Fed. 2d, 118) "is in the very words of Section 13 (4) of the Interstate Commerce Act". The intrastate rates which were fixed by the Interstate Commerce Commission in this proceeding are stated by the Commission (R. 25) to be "less than half of the proposed interstate rates" and to be "less than reasonably compensatory". The interstate rates referred to as proposed are the same rates as those which were ordered into effect (R. 27). The disparity found by the Commission, and shown by the undisputed evidence, to exist is quite as great, if not greater, than that condemned in Houston & Texas Ry. vs. United States, 234 U. S. 343, and pointed out at page 346.

There was thus a finding that the entire Cummer scale of rates was "less than compensatory". There was great disparity between those rates and the rates fixed as reasonable for interstate movement by the Commission. The Cummer scale was less than compensatory wherever it applied. The rates in Florida, state and interstate, south of the line described as north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, are generally higher than the rates north of that line (R. 489). The discrimination, therefore, worked against interstate commerce by the Cummer

scale, applicable from points of origin south of that line, was more pronounced than the discrimination north of the line. The discrimination against persons and localities worked by the Cummer scale was very pronounced in the northern part of the State. The preference of this particular description of traffic is obvious.

It has been pointed out that the Georgia manufacturer buying logs in Florida and shipping them to his mills in Georgia on the Atlantic Coast Line pays a rate much in excess of what would be paid by the Florida manufacturer for like transportation of the same logs. The inevitable result is that the movement of this traffic is directed to Florida manufacturing points and away from Georgia manufacturing points. The Commission has found unlawful discrimination against persons and localities and against interstate commerce on evidence which would seem to be compelling, certainly substantial.

The amount of the traffic involved is enormous, being measured in hundreds of thousands of car loads. The amount of the revenue involved is very large. These facts make an unreasonable preference of intrastate shippers and an unreasonable prejudice against and burden upon interstate commerce, and an unreasonable preference of this particular description of traffic. The Congress, by the Transportation Act (Section 15a of the Act to Regulate Commerce), intended "to maintain an adequate railway service for the people of the United States". (Wisconsin Case, 257 U. S. 585.)

> "Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. * * * If the rates, on which such receipts are based, are to be fixed at a substantially

lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. The effective operation of the Act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system."

257 U. S. 585, 586.

Section 15a does not confer power upon the Commission to deal with intrastate rates, but it became a part of the Interstate Commerce Act and the power is, of course, conferred by other sections of the Act.

Section 13 (4) of the Act is also taken from the Transportation Act, and this vested the Commission with a direct power to remove "any undue, unreasonable or unjust discrimination against interstate or foreign commerce".

This Court says:

"It is impossible to escape the dovetail relation between that provision and the purpose of § 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it", etc.

257 U. S. 586.

Wherever logs are shipped from Florida points within 170 miles of the Georgia mills on the Atlantic Coast Line, and there are 65 of them in Georgia within a radius of 170 miles of the Georgia-Florida line, there is a direct discrimination against those mills and the Georgia communities in which they are situated. Wherever logs are shipped in Florida intrastate on the Atlantic Coast Line Railroad under the Cum-

mer scale, whether or not those logs could be shipped into Georgia for manufacture, there is an unjust discrimination against interstate commerce because those rates and that transportation do not share their fair part of the cost of maintaining an adequate railway system, and in not bearing that part of this cost, it is placed upon the other commerce, including interstate commerce. These same facts make undue preference of this particular description of traffic.

This unduly low rate for logs, wherever it is applied, enables the manufacturer in Florida to have an undue advantage in the interstate markets of consumption as compared with any manufacturer not so favored.

The power to prevent this burden being placed upon interstate commerce has been exercised in a good many ways, as in the abandonment by the railroad, as to both intra and interstate traffic, of a branch line lying wholly within the state of the owning company's incorporation. This authority is exercised "not primarily to protect the railroad, but to protect interstate commerce from undue burdens or discrimination".

Colorado vs. United States, 271 U. S. 152, 162.

> "Excessive local expenditures may so weaken the financial condition of the carrier as to raise the cost of securing capital required for providing transportation facilities used in the service, and thus compel an increase of rates."

271 U. S. 163.

In the Colorado case the Court states:

> "The exertion of the federal power to prevent prejudice to interstate commerce so arising from the operation of a branch in intrastate commerce is similar to that exerted when a State establishes intrastate rates so low

that intrastate traffic does not bear its fair share of the cost of the service."

271 U. S. 163.

An order of a State commission requiring a carrier to erect a union station so expensive as unduly to deplete the financial resources of the carrier may not be effective without an order of the Interstate Commission, and this because it was "the purpose of Congress to prevent interstate carriers from incurring expense which will lessen their ability to perform their interstate functions".

Railroad Commission vs. Southern Pacific,
264 U. S. 331, 347.

The preservation of the earning capacity and conservation of the financial resources of individual carriers is a matter of national concern.

Texas & Pacific Ry. Co. vs. Gulf, etc., Ry. Co.
270 U. S. 268, 277.

The increase by the Interstate Commerce Commission of intrastate railway affairs, which subject interstate commerce to unjust discrimination, was sustained in United States vs. Village of Hubbard, 266 U. S. 474.

It is clearly intimated that a burden may be put upon interstate commerce by a State fixing full statutory liability for the transportation of baggage, and that this may be removed by order of the Interstate Commerce Commission.

See Missouri Pacific R. R. vs. Boone, 270 U. S. 466.

It was contended that under Section 13 (4) the Commission had no right to interfere with the Cummer scale of rates

because that scale was not "made or imposed by authority of any state." There are several replies to this position.

The first is, that the rate was imposed by the authority of the State of Florida. It is true that the origin of this situation was in contract. We have pointed out that when the Atlantic Coast Line filed its tariffs with the Florida Commission governing transportation, this tariff was rejected because it applied to only train loads and not over the entire line of the carrier. The carrier then filed a second tariff which was again rejected because of its restrictions. Finally, the Commission permitted the filing of a tariff quite different from that sufficient to satisfy the contract and which made the rates applicable, not only in train loads but in car load lots, and also over any part of the line of the carrier up to 170 miles so that the rate as it is was made and imposed by the Florida Commission. The Florida Commission appeared in the hearing before the Interstate Commerce Commission and is a party litigant in the cases now before the court in opposition to the withdrawing of the rates by the Atlantic Coast Line. The failure of the State of Florida to permit the withdrawal of the rates is equivalent to imposing the rates. The construction of the law is entirely too narrow. It is based upon the provisions of Section 13 (3) which we have set out above. Section 13 (3) does not add to or detract from the jurisdiction of the Commission. It is procedural and requires, when the Commission considers the rate, etc., made or imposed by the authority of any State or initiated by the President during the period of Federal control, that the Commission "before proceeding to hear and dispose of such issue, shall cause the state or states interested to be notified of the proceeding."

That simply requires that in those circumstances the Commission shall proceed in a manner different from that in which it would proceed if the rate was not so made. Section 13 (4) provides that the Commission, when in such investigation, after full hearing finds that any such rate, etc., causes any undue or unreasonable advantage, preference, or prejudice, etc., to make other rates, charges, classification, etc.

In Section 13, subsection 1, the Commission is authorized to make investigations of complaints initiated before it by any person at interest, including any body politic or municipal organization. Under subsection 2 it is authorized to investigate in a complaint by the Railroad Commissioner or Railroad Commission of any state. It is also authorized to make an investigation on its own account.

The words "such rate, fare, charge, etc." referred to in Section 13 (4) means the rate, fare, charge, etc. brought under investigation by the complaint which had been filed with the Commission.

The construction contended for by the appellants is equivalent to saying that a carrier by filing a rate with a State Commission takes that rate out of the jurisdiction of the Interstate Commission, whereas, if the rate had been made or imposed by the authority of the state, it would be within the jurisdiction of the Interstate Commission, thereby giving to the act of the carrier a greater power than was given to the orders made by the President during the period of Federal control and greater than is reserved to the States. Such a construction, of course, should be adopted only when some superior authority compels its adoption.

It is doubtful if any rate which can be effective within a state only when it shall have been filed within the Commission is not made or imposed by authority of the state within the meaning of the statute. We feel very sure that the construction contended for is wholly incorrect.

There is a marked inconsistency in the positions taken by counsel for appellants in their brief. They insist that an extraordinary amount of evidence should have been introduced before the Commission to justify it in overcoming the act of the State of Florida, and then deny that the rate removed was imposed by the authority of the State of Florida.

VII.

THE RELATION OF THE INTER AND THE INTRASTATE RATES.

> "The power to deal with the relation between the two kinds of rates as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carriers' interstate and intrastate charges, without directly interfering with the former, unless it simply follows the standard set by the Federal authorities."
>
> Shreveport Case, 234 U. S. at 354.

See also Dayton-Goose Creek Ry. vs. United States, 263 U. S. 456, 477, where the Court held that Sections 418 and 422 of the Transportation Act "conferred on the Commission valid power and duty to raise the level of intrastate rates when it found that they were so low as to discriminate against interstate commerce and unduly burden it".

The order of the Commission in this case amounts to a fixing of relations between the two classes of rates on this commodity.

> "The power of Congress to regulate interstate commerce includes the power to foster, protect and control it, with proper regard for the welfare of those who are immediately concerned as well as of the public at large."
>
> Dayton-Goose Creek Ry. vs. United States,
> 263 U. S. 456, 478.

The Transportation Act, Section 15a, contemplated that there should be a net operating income equal as nearly as may be to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. That return is not from interstate traffic alone but from all of the traffic, state or intrastate. Under the recapture clause of Section 15a, the income to be taken into consideration is the income from all traffic, and Congress has control of "that part of the excess possibly due to intrastate rates, which if present is indistinguishable".

> Dayton-Goose Creek Ry. vs. U. S., 263 U. S. 485.

So the power in the Commission to deal with the relation of rates would appear to be indispensable to the plan of Congress.

> "The combination of uniform rates with the recapture clauses is necessary to the better development of the country's interstate transportation system as Congress has planned it."
>
> Dayton-Goose Creek Case, 263 U. S. 485.

VIII.

DISADVANTAGE IN THE SELLING MARKET CONSTITUTES DISCRIMINATION.

The Commission has on a number of occasions held that the difference in the level of intrastate and interstate rates may be removed.

See the case of Swift & Co. vs. Georgia Northern Ry. Co., 115 I. C. C. 661. In that case the rate on hogs shipped from Dothan, Alabama, to Montgomery, Alabama, was about $12.00 below the rate to Moultrie, Georgia; the distance to Montgomery being 119 miles and to Moultrie 121 miles. The Commission removed that discrimination.

In City of Augusta vs. A. C. L. Railroad, 113 I. C. C. 303, an unjust discrimination was found against Augusta in favor of points in South Carolina. The market competition was stressed at pages 306 and 307.

The granting of an allowance of milling in transit to intrastate traffic and a denial to interstate traffic was declared unduly prejudicial in Southwestern Milling Co. vs. A. T. & S. F. Railway, 118 I. C. C. 61.

Some other cases to the same kind of purport are:

Arkansas Jobbers & Manufacturers Ass'n vs. A. T. & S. F. Ry., 118 I. C. C. 238:
Blackshear Mfg. Co. vs. A. C. L. R. R. Co., 107 I. C. C. 538;
Consolidated Southwestern Cases, 123 I. C. C. 200;
Salt Cases of 1923, 92 I. C. C. 388, 435;
New Mexico Corp. Comm. vs. A. T. & S. C. Ry., 93 I. C. C. 43;

Oklahoma Portland Cement Co. vs. A. & S. Ry.,
93 I. C. C. 605;
Oklahoma Corp. Commission vs. A. & S. Ry.,
98 I. C. C. 183, 200.

Other cases on this subject are cited in Vol. 10 of the Abridged Reports and Current Digest of the I. C. C. by Lust, page 883.

IX.

PULLMAN CHARGE

The Interstate Commerce Commission, in the matter of Surcharge for Transportation of Passengers in Sleeping Cars or Parlor Cars between points in the State of Alabama, (62 I. C. C. 153), held that:

> "Charges for the transportation of passengers in sleeping and parlor cars required by state authority to be maintained by the respondent steam railroads within the State of Alabama found to be lower than the corresponding interstate charges authorized in Increased Rates, 1920, 58 I. C. C. 220, and to be unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce."

The same ruling was made as to like transportation in the State of Georgia (69 I. C. C. 623).

In principle this case at bar is not unlike those Pullman Surcharge Cases.

X.

THE ISSUE OF DISCRIMINATION WAS MADE BY THE PLEADINGS BEFORE THE COMMISSION.

A petition to the Commission is required to "briefly state the facts". (§ 13 of the Act.) The Court below found that this question had been properly made (R. 48, 49).

In the petition of the Georgia Public Service Commission to the Interstate Commerce Commission, in paragraph 3 thereof, it is alleged as follows (R. 193):

> "That the object of this complaint is to secure reasonable rates on logs from all points on the Atlantic Coast Line Railroad, as hereinafter shown within the State of Florida to all destinations on the said Atlantic Coast Line Railroad in the State of Georgia, *and to have removed any unjust discrimination or undue prejudice found to exist as provided in the Interstate Commerce Act.*"

In paragraph 11 of the petition (R. 196) it is charged that the Florida rates "give undue and unreasonable preference and advantage to intrastate shippers in Florida; and are unduly prejudicial and disadvantageous to the interstate shipper in Georgia, and causes undue and unreasonable and unjust discrimination against interstate commerce in the violation of Section 13 of the Interstate Commerce Act".

The prayers of the petition (R. 197) ask an order requiring the Atlantic Coast Line "to cease and desist from the aforesaid violation of the Interstate Commerce Act"; and that the Commission prescribe "just, reasonable, non-discriminatory and non-prejudicial interstate rates to be observed and charged in the future by the defendant carrier for the trans-

portation of carload shipments of logs, from all points located in the State of Georgia; that the measure of said rates be no higher than the rates concurrently in effect for the same kind of property, from producing points located within the State of Florida, moving in intrastate commerce, to destinations within the State of Florida".

The petition then has a prayer for such other and further orders as the Commission may consider proper in the premises.

In the petition to intervene by the Putnam Lumber Company (R. 215, Par. 13) there is an allegation "that said intrastate rate does not unjustly discriminate against interstate commerce". The intrastate rate referred to is the Cummer scale.

In the second amended petition for leave to intervene the Georgia-Florida Saw Mill Association (R. 220) alleged:

> "That the level of Florida intrastate rates is involved as evidenced by paragraph 8 of complaint and as further evidenced by averment of intervening carriers, viz: Seaboard Air Line Railway Company, Central of Georgia Railway Company, Southern Railway Company, and Georgia, Southern & Florida Railway Company."

At page 225 of the record is the intervention of the Seaboard Air Line, Central of Georgia, Southern Railway, and Georgia, Southern & Florida. The intervention shows that these roads are opposed to the continuance of the said intrastate rates in Florida or the adoption of these rates for interstate application between points in Florida and points in Georgia via the lines of the Atlantic Coast Line Railroad Company, or otherwise, and whether for the purpose of estab-

lishing reasonable maximum rates under Section 1 of the Act or for the purpose of removing undue discrimination as complained of in the complaint filed in this proceeding.

The intervention of the American Short Line Railroad Association (R. 227) also shows that this question of discrimination is in issue.

The petition for leave to intervene by Brooks-Scanlon Corporation (R. 230, at 231) also puts this question of discrimination in issue.

The Court below found against this contention (30 Fed. 2d, 120) (R. 48).

It is difficult to understand any basis for this contention.

The Governor of the State of Florida had been notified and the Florida Railroad Commission appeared in defense of the rates.

XI.

THE ORDER OF THE COMMISSION WAS NOT ARBITRARY BECAUSE UNSUPPORTED BY THE EVIDENCE.

The answer to the contention that the order was arbitrary because unsupported by the evidence is, of course, the evidence itself which we have undertaken to summarize, which is clearly sufficient and, as we believe, compelling. The facts found by the Commission in its report are amply, fully, and compellingly sustained by the record.

It is insisted by appellants that the Commission exceeded its authority and the evidence in making its order, which upsets the Cummer scale, apply wherever the Cummer scale

applied. The Cummer scale applied on only the Atlantic Coast Line Railroad and only for distances not greater than 170 miles. It did not apply to joint transportation nor to rail and water transportation. The court in its first opinion, which undertook to construe the order of the Commission as limited "to points of origin on the Coast Line Railroad north of and including Jacksonville, Gainesville, Burnett's Lake and High Springs" (R. 50), did so "from a cursory search of the record"; the court's language being:

> "From a cursory search of the record it appears to be true that the evidence, though often broadly phrased, really related to the logs in north Florida," etc.

The Commission did not share that view, and after the rendition of that opinion it made the amendment of February 7, 1929, and declared that its order should be operative "within and throughout the State of Florida. without exception" (R. 167).

The court in its second opinion, after noting that the original order had been thus clarified, said:

> "We have, therefore, to examine the record more closely and see if a state-wide change of the rate is sustainable. Except as to the territorial application of the order, we find no occasion to modify what was previously ruled."

We thus see that the first opinion was rendered upon a cursory examination of the record and was based upon a construction of the language of the order. The Commission, having due respect for the court and being mindful that its purpose was to make the order state-wide, made the clarification it its order to which we have above referred. The court then felt under the necessity to and did "examine the record more

closely and see if a state-wide change of the rate is sustainable."

The court found that it was sustainable.

Amongst the reasons assigned as to why this order should not have been state-wide is that the Atlantic Coast Line was the only carrier against whom the petition was filed. The answer to that is three-fold: The first is, that the Atlantic Coast Line is the only carrier in Florida over which the Cummer scale was applicable; the second is, that the rates on the other carriers, as we have shown in the synopsis of the evidence in this brief, bear very close relationship to the rates which were established by the Commission; and the third is, that the Seaboard Air Line Railway Company, the Georgia, Southern & Florida Railway Company, and the Central of Georgia Railway Company became parties to the proceedings by intervention.

TO HAVE MADE THE ORDER LESS THAN STATE-WIDE WOULD HAVE CREATED THE UTMOST CONFUSION.

The contention is that the order should have been limited to the line which has been described and which includes Jacksonville, Gainesville, Burnett's Lake and High Springs, Florida. That would have left the mills at Palatka, Lacoochee, Lake Wales, Seers, Sherman and Holopaw and all other mills and timber south of the line out of the effect of the order. It would have left great tracts of timber south of the line having the benefit of the rates, while tracts north of the line would not have had it. It would have produced the anomaly of having log trains move over the same track almost for the entire distance to Jacksonville and Eastport and Milldale, one train carrying logs at one rate and another train carrying logs at a

wholly different rate. It would have produced the anomaly of having a shipper pay one rate for logs cut from his own property south of the line and another rate on logs cut from another part of his property north of the line, though they moved in the same train to the same destination. It would have put the timber north of the line at a disadvantage as compared with the timber south of the line. It would have enabled the manufacturer at Lake Wales, which is in the center of the state, at Seers, which is in the far southern part of the state, at Sherman, which is in the southeastern part of the state, and at Holopaw, which is south of Tampa, at a tremendous advantage over the manufacturer at Jacksonville, or Eastport, or Milldale. It would have given the manufacturer at Palatka, which is near Duval County, in which Jacksonville, Eastport and Milldale are located, a tremendous advantage over the manufacturer at Jacksonville. It would have accentuated the wrong which needed to be eradicated. Such an order would have failed because of its own defects.

XII.

THE NATURE OF THE ORDER WHICH THE COMMISSION MAY PASS.

The Commission may enter any order which is necessary or desirable to remove the unjust discrimination which it finds to exist, whether that be as to making a general body of rates or as to making a single rate or as to making a single rate to a particular shipper.

Note N. C. & St. L. Ry. Co. vs. State of Tennessee, 262 U. S. 318, 319, where the Commission removed an exception to an action of the State of Tennessee authorizing an increase

of intrastate freight rates to correspond with the level of interstate rates "but excluded rates on stone and gravel when for use in building public highways and consigned to federal, state, county or municipal authorities". That exception was found to work an illegal discrimination and restriction.

Section 13 (4) of the Act authorizes the Commission to prescribe "the rate, fare or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation or practice thereafter to be observed, in such manner, as, in its judgment, will remove such advantage, preference, prejudice or discrimination". That would appear to empower the Commission to remove the discrimination in any way in its judgment necessary thereto.

The Commission has the right to pass an order sufficient to remove anything which directly obstructs and thus regulates interstate commerce, whether that thing is State legislation or private contract between individuals or corporations.

See New York vs. United States, 257 U. S. 591, 601.

NATURAL RESOURCES

Stress is laid in the brief of opposing counsel on the fact that logs are natural resources, apparently claiming exemption on that account from the ordinary effects of the law.

A State has no power to prevent the movement of its natural resources in interstate commerce nor to prefer its own markets and citizens. The court has dealt with the subject of oil and gas in this respect in Oklahoma vs. Kansas Natural Gas Co., 221 U. S. 229, and in Pennsylvania vs. West Virginia, 262 U. S. 553, 597, and in the cases cited in those cases. These cases hold that the State of production has no right to do that which by necessary operation prevents, obstructs or burdens

the transmission of such natural resources in interstate commerce or which prefers its own markets and citizens as to such resources, and that such acts on the part of the producing State constitute a prohibited regulation of interstate commerce.

We respectfully submit that the order of the Interstate Commerce Commission is fully sustained by both the evidence and the law; that it is clearly proved that the discrimination was not only substantial but extreme; and that this case presents a perfect illustration of the necessity of having the Interstate Commission vested with power adequate to its action therein. It is respectfully urged that the decree of the lower court be affirmed.

Respectfully submitted,

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April 17, 1930.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929

STATE OF FLORIDA AND A. S. WELLS, E. S. MATHEWS, ET AL *Appellants,* vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.	NO. 493
BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, AND CUMMER CYPRESS COMPANY, *Appellants,* vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.	NO. 494
WILSON LUMBER COMPANY OF FLORIDA, *Appellant,* vs. UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.	NO. 495

APPENDIX TO BRIEF ON BEHALF OF ATLANTIC COAST LINE RAILROAD COMPANY

The Atlantic Coast Line Railroad Company attaches hereto four (4) maps of parts of Florida.

Map No. 1 uses Perry as the center of a series of circles. Perry is one of the important places of origin of the shipments of logs involved in this case. The circles in red show the application of the Florida intrastate scale of rates on logs (the Cummer scale). The green circles shown the application of the corresponding rates fixed by the Interstate Commerce Commission as reasonable for intrastate transportation of the same logs in Florida. Three and five-tenths (3.5) cents, under the Commission's scale, will carry 100 pounds of logs 30 miles; three and seven-tenths (3.7) cents will carry 100 pounds of the same logs 170 miles, under the Cummer scale.

Map No. 2 gives the same kind of information, using Hines as the center.

Map No. 3 gives the same kind of information, using Homosassa as the center.

Map No. 4 gives the same kind of information, using Lake Wales as the center.

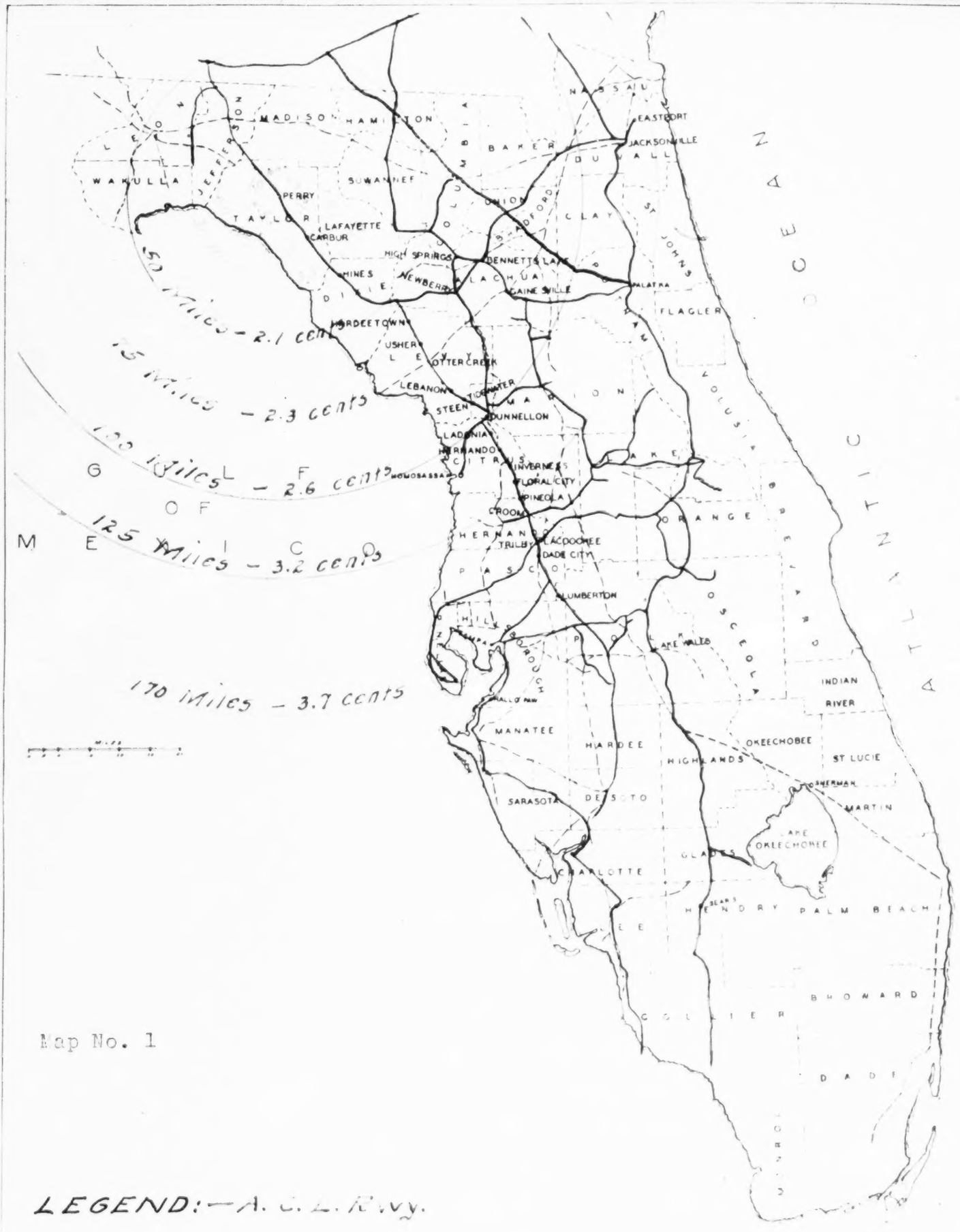
Each of these maps also shows the location of Sherman on Lake Okeechobee; and of Seers in Hendry County; the approximate location of Holopaw, south of Tampa; and of Lacoochee in Pasco County; all of which are manufacturing centers; and some of the points used by the witness Price in his testimony, such as Hardeetown, Usher, Otter Creek, Lebanon, Tidewater, Steen, Dunnellon, Ladonia, Hernando, In-

verness, Floral City, Pineola, Croom, Trilby, Dade City, and Lumberton. The object of these maps is to visually contrast the two sets of rates and to show the territorial extent of the investigation made by the Commission, as shown by the record in this case.

Respectfully submitted,

F. B. GRIER,
CARL H. DAVIS,
W. E. KAY,
ROBERT C. ALSTON,
Counsel for Atlantic Coast Line Railroad Company.

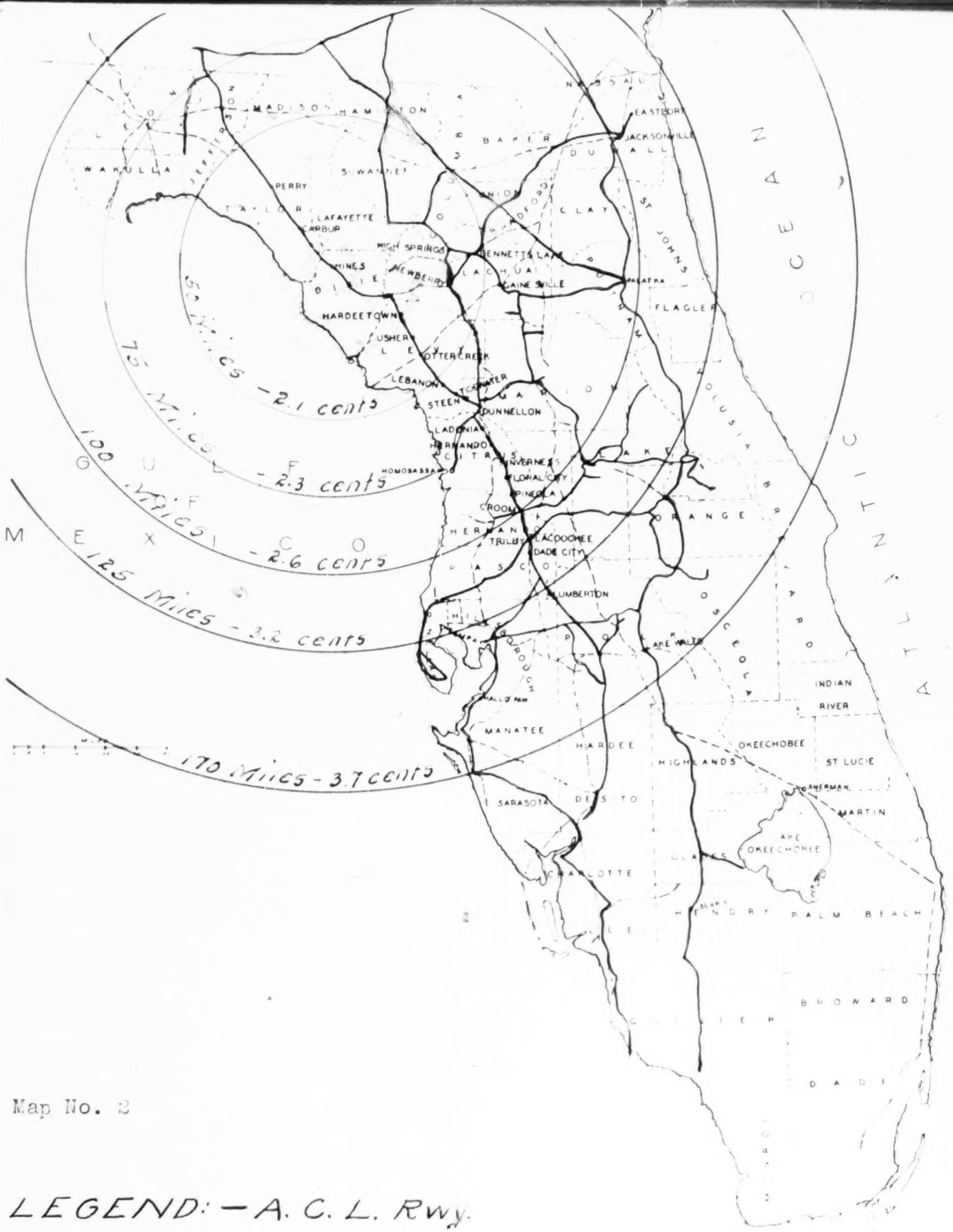
April 24, 1930.



Map No. 1

LEGEND:— A. C. L. Rwy.

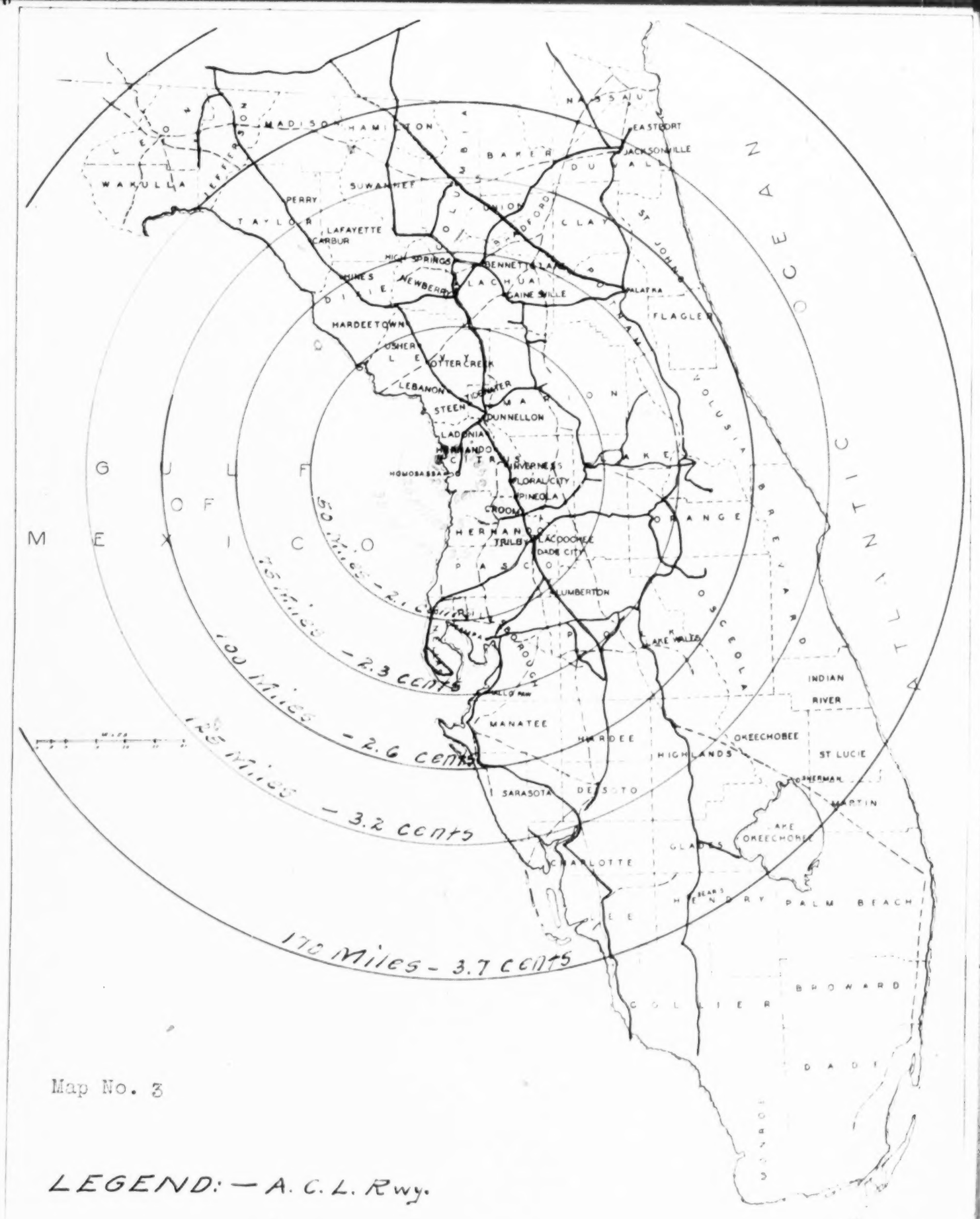
— Southern Rwy.



Map No. 2

LEGEND:— A. C. L. Rwy.

— Southern Rwy.



Map No. 3

LEGEND: — A. C. L. Rwy.

— Southern Rwy.

Map No. 4

LEGEND:—A. C. L. Rwy.

—Southern Rwy.

FILE COPY

16-17-18

Nos. ~~493, 494, and 495~~

FILED
APR 26 1930
CHARLES ELMORE CROPLEY

In the Supreme Court of the United States

OCTOBER TERM, 1929

THE STATE OF FLORIDA AND A. S. WELLS, E. S. MATTHEWS, ET AL., ETC., APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, CUMMER CYPRESS COMPANY, APPELLANTS

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

WILSON LUMBER COMPANY OF FLORIDA, APPELLANT

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 493

THE STATE OF FLORIDA AND A. S. WELLS, E. S. Matthews, et al., Etc., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE Commerce Commission, et al.

No. 494

BROOKS-SCANLON CORPORATION, WILSON CYPRESS Company, Cummer Cypress Company, appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE Commerce Commission, et al.

No. 495

WILSON LUMBER COMPANY OF FLORIDA, APPELLANT

v.

THE UNITED STATES OF AMERICA, INTERSTATE Commerce Commission, et al.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the specially constituted District Court upon the original hearing (R. 44) is reported in 30 F. (2d) 116. The opinion of that court upon rehearing (R. 167) is reported in 31 F. (2d) 580. The report of the Interstate Commerce Commission (R. 16) is reported in 146 I. C. C. 717.

JURISDICTION

The final decrees of the District Court were entered April 22, 1929. (R. 170, 951, 1013.) Petitions for appeal were filed June 6, 1929, and were allowed the same day. (R. 171, 178, 952, 959, 1014, 1020.)

The jurisdiction of this Court rests on the Act of October 22, 1913, c. 32, 38 Stat. 208, 220 (U. S. C. Title 28, Sec. 47), as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U. S. C. Title 28, Sec. 345).

QUESTIONS PRESENTED

The questions presented are (1) whether an order of the Interstate Commerce Commission increasing the Atlantic Coast Line's intrastate Florida log rates in order to remove undue discrimination against interstate commerce was authorized by Section 13 (4) of the Interstate Commerce Act, (2) whether this order was issued after the Commission had allowed a full hearing on the question of

undue discrimination against interstate commerce, and (3) whether there was sufficient evidence to sustain the Commission's finding of undue discrimination against interstate commerce.

STATUTE INVOLVED

The pertinent provisions of the Interstate Commerce Act are set forth in the Appendix, pp. 38–41.

STATEMENT

Appellants in No. 493, the State of Florida and A. S. Wells, E. S. Matthews, and Mamie G. Eaton, as and constituting Florida Railroad Commission, brought suit in the United States District Court for the Northern District of Georgia, sitting as a specially constituted three-judge court, to set aside and enjoin that part of an order of the Interstate Commerce Commission which required the Atlantic Coast Line Railroad Company (hereinafter sometimes called "the Atlantic Coast Line") to establish carload rates for logs (except walnut, cherry, and cedar) moving in intrastate commerce throughout the State of Florida the same as those prescribed by the Commission for logs moving in interstate commerce from northern Florida to destinations on its line in Georgia. (R. 1, 15–16.) Suits to obtain the same relief were brought in the same court by appellants in No. 494 and by appellant in No. 495. (R. 870, 960.) The Atlantic Coast Line and the Georgia Public Service Commission (hereinafter

sometimes called "the Georgia Commission") were allowed to intervene in each case. (R. 31, 150, 888, 935, 973, 1001.) The three suits were consolidated by the District Court and the present appeals are from final decrees on rehearing dismissing appellants' original and supplemental bills. (R. 43, 170, 951, 1013.)

On May 3, 1926, the Georgia Public Service Commission filed a complaint with the Interstate Commerce Commission against the Atlantic Coast Line. (R. 193.) The complaint set forth the intrastate Florida log rates of the Atlantic Coast Line and the interstate log rates of that railroad between Florida and Georgia for all distances up to 170 miles and showed that for all distances of 15 miles or more the latter rates were more than twice the former and were at certain distances 233% higher. (R. 194, 197–198.) The complaint charged that these interstate rates were unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act, unjustly discriminatory in violation of Section 2 of the Act, and unduly prejudicial to the interstate shipper and preferential in favor of the intrastate shipper in violation of Section 3 of the Act. (R. 196.) It also charged that the Florida intrastate rates caused undue, unreasonable and unjust discrimination against interstate commerce in violation of Section 13 of the Act. (R. 196.) The complaint asked the Commission to determine just, reasonable, nondiscriminatory and nonprejudicial

interstate rates to be observed by the railroad for the transportation of carload shipments of logs "from all points located in the State of Florida to all destinations located in the State of Georgia" and that the measure of these rates be no higher than the rates concurrently in effect for the same kind of property moving in intrastate commerce within the State of Florida. (R. 197.) The answer of the Atlantic Coast Line admitted the difference between the Florida intrastate rates and the Florida-Georgia rates, denied that the interstate rates were either unjust or unreasonable and alleged that "to whatever extent there may be discrimination against interstate shippers or interstate commerce under the rates complained of, such discrimination is not attributable to anything voluntarily done" by that railroad. (R. 199–200.)

The State of Florida was notified of the complaint pursuant to Section 13 (3) of the Commerce Act and the Florida Railroad Commission (hereinafter sometimes called "the Florida Commission") appeared in defense of its rates. (R. 400, 401.) Certain Georgia lumber manufacturers intervened or appeared in support of the complaint. (R. 205, 422, 532, 544, 553.) Appellants in No. 494 and other Florida interests intervened or filed petitions to intervene in behalf of the Florida rates. (R. 207, 212, 215, 217, 221, 223, 230.) Four railroads operating intrastate in Florida and interstate between Florida and Georgia and the American Short Line

Railroad Association representing Short Line Railroads so operating intervened in opposition to the continuance of the Atlantic Coast Line's intrastate Florida rates and to the adoption of these rates for interstate application. (R. 224, 226.)

At the hearing before examiners of the Interstate Commerce Commission no evidence was introduced in support of a violation of Section 2 of the Commerce Act and there was little, if any, evidence that the interstate Florida-Georgia rates were unreasonable *per se* in violation of Section 1 of the Act. All the evidence therefore related to the Florida intrastate rates as effecting either any undue, unreasonable, or unjust discrimination against interstate commerce in violation of Section 13 (4) of the Act or any undue or unreasonable prejudice against persons or localities in violation of Section 3 or Section 13 (4).

The Georgia Commission did not offer any schedule of reasonable Florida-Georgia rates but insisted that these rates should be no higher than the Florida intrastate rates. (R. 707–708.) The rate expert for the Georgia Commission testified that the Florida intrastate rates involved in the case applied between any two points on the Atlantic Coast Line's railroad for any distance up to 170 miles. (R. 416.)

The Atlantic Coast Line, while contending that its existing Florida-Georgia rates were reasonably low, offered to put into effect a lower schedule,

which the Interstate Commerce Commission in its order in this case substantially adopted. (R. 22, 27, 486.) It was shown that the proposed Florida-Georgia rates had been approved by the Alabama Public Service Commission, and that they had been approved by the Georgia Commission to become effective June 1, 1925, although this Commission had suspended the rates after evidence had been submitted of an "intolerable situation" existing as to Florida intrastate rates. (R. 291–293, 480.) It was also shown that they had been approved, with slight variations, by the Interstate Commerce Commission for interstate application between points in Georgia and South Carolina and South Carolina and North Carolina (*Pierpont Mfg. Co.* v. *Southern Railway Co.*, 50 I. C. C. 81; *Southern Veneer Association* v. *A. C. L. R. R. Co.*, 62 I. C. C. 669) and had been proposed for adoption by an examiner in a pending case, the Commission itself adopting these rates prior to its decision in the instant case (*Southern Cotton Oil Co.* v. *A. C. L. R. R. Co.*, 120 I. C. C. 190). (R. 21, 291–293, 484–485.) For all distances of 25 miles or more the Florida intrastate rates were less than half of these rates which two State Commissions and the Interstate Commerce Commission had almost concurrently approved.

The Florida intrastate rates of the Atlantic Coast Line did not rest on the usual rate considerations. They represented rates, taking into account percentage increases and decreases and some exten-

sion in the distance covered by the scale, established in 1903, and generally known as the Cummer scale, between a mutually owned lumber company and a railroad. (R. 258, 269, 469–470.) The Atlantic Coast Line later acquired the railroad but did not renew the rate contract when it expired in 1918. (R. 19.) In 1914 the Atlantic Coast line and a lumber company, the predecessor of appellant Brooks-Scanlon Corporation, entered into a contract which at the time of the hearing was still in effect. (R. 261, 470, 492.) Under the terms of this contract solid log trains of not less than 30 cars were to be operated every working day and the contract was to continue until such time as the timber then owned by the company in two Florida counties, consisting of approximately 1,000,000,000 feet of pine, had been transported. (R. 268, 470.) The lumber company agreed in the contract that any rail movement of the product manufactured from the logs should be over the Atlantic Coast Line if the rates were as low as any other available rates. (R. 267.) The contract obligations were subject to Federal and Florida laws and to the order of any court or commission of competent jurisdiction. (R. 268.) Pursuant to this contract the Atlantic Coast Line filed a tariff covering train-load movements with the Florida Commission which the Commission refused to approve unless it was made generally applicable to single car movements. (R. 471.) The Atlantic Coast Line, rather than repudiate its contract obli-

gations, elected to make the rates applicable on any number of cars of logs between any two stations in Florida. (R. 475.)

After this tariff had been presented to the Florida Commission in 1914 its rate expert wrote the Atlantic Coast Line that in the opinion of the Commissioners the log rates were "too low," that the Commissioners regretted that the railroad had seen fit to publish "these extremely low rates" and that the rates were published "in direct opposition" to the advice and suggestions of the Commissioners. (R. 270–271.) The letter referred to the rates as "barely remunerative," said that to make them would reduce the railroad's power "to make other just and reasonable rates" and asserted that they "amount practically to a discrimination against other classes of freight." (R. 271.)

In August, 1915, the Chairman of the Florida Commission wrote that the Commissioners thoroughly agreed that the Atlantic Coast Line log rates were "too low" and that the Florida rates generally applicable on logs had been put into effect after an extended investigation, and that they were lower than the rates in six other southeastern States, in which States conditions were practically the same. (R. 272–274.) The Atlantic Coast Line's Cummer scale was more than 50% lower than these log rates established by the Florida Commission. (R. 274.)

The assistant freight traffic manager of the Atlantic Coast Line testified that if anything ap-

proaching the Cummer scale should be made the measure of reasonableness of the railroad's log rates generally, the result from a revenue standpoint could not be justified (R. 477); that he doubted exceedingly whether these rates were compensatory (R. 492); that it would be out of the question to substitute for its interstate mileage scale on logs any scale even approximating its Florida intrastate scale (R. 484); and that the Cummer scale was no more than one-half of the rates generally applicable on logs in the southeast, where logs are handled on a particularly low level of freight rates. (R. 287, 477.) The Atlantic Coast Line would not to-day enter into the contract which it made in 1914; the conditions then offered greater chance of profit than did present conditions. (R. 491.)

The superintendent of transportation of the Atlantic Coast Line, whose work included the preparation of cost and efficiency statistics (R. 522–523), introduced a study of the cost per car of transporting logs during the month of September, 1926, for the Brooks-Scanlon Corporation. This represented approximately the most economical conditions of transportation possible under the Florida rates. Under the contract with the predecessor of Brooks-Scanlon Corporation transportation was in solid daily log trains and September was one of the least expensive months from an operating standpoint. (R. 470; 530.) There was included an allowance of interest at 6% on the cost of

the equipment used but no interest allowance for land or roadbed. (R. 294, 298.) The figures used were supported by the testimony of a freight conductor of the Atlantic Coast Line and of the superintendent of its terminals at Jacksonville, Florida, who were both engaged in the movement of cars in and out of the Brooks-Scanlon Corporation's lumber plant. (R. 586–587, 591.) The total cost per car shown was $19.13 as against a per car revenue of $20.47. (R. 294, 522.) A computation predicated upon this cost study made by the rate expert of the Florida Commission showed a total per car cost of $14.20. (R. 369–370.) This computation did not include any allowance for interest on equipment and it was based on a partial observation of one day's operation. (R. 371–372, 633, 711.) The accuracy of the Atlantic Coast Line's cost study was vigorously defended (R. 709–713) and no reply was made to this defense.

The Florida intrastate, Georgia intrastate, and Florida-Georgia interstate log rates of the Georgia, Southern & Florida Railway Company and the Alabama, Georgia and South Carolina intrastate log rates of the Southern Railway Company were more than twice as high as the Cummer scale for all corresponding distances over twenty miles. (R. 238–242, 245–247.) The Georgia intrastate log rates of both these railroads were, for corresponding distances of sixty miles or more, generally three times greater than the Cummer scale. (R. 239–240, 246–247.) The lowest log rates shown for

these railroads were the North Carolina intrastate rates for the Southern Railway Company and even these were, for distances of seventy-five miles or more, approximately twice the Cummer scale. (R. 247.) Both the commerce agent of the Seaboard Air Line Railway Company and the assistant general freight agent of the Central Georgia Railway Company testified that the Cummer scale was unduly low. (R. 433, 434, 439, 455, 456.)

The per-car revenue of the Atlantic Coast Line from logs moving intrastate in Florida on the Cummer scale was less than half the per-car revenue from brick, gravel, and sand, lime and cement moving on its line Georgia-Florida interstate. (R. 279–280.) For distances of 35 miles or more the per-car revenue on each of these commodities was over three times the revenue from the Cummer scale. (R. 279–280.) A very similar relation existed between the per-car revenue from the Cummer scale and the per-car revenue from these commodities moving intrastate on the Atlantic Coast Line in Georgia and intrastate on its line in Florida, with limestone substituted for gravel in the schedule of Florida intrastate rates. (R. 282, 284.) The lopsided rate structure brought about by the Cummer scale is further shown by the fact that the Florida intrastate log rate on the Atlantic Coast Line for a car of 55,000 pounds was $20.35 for 170 miles and, after the Cummer scale ended, $45.82 for 180 miles, although for the next 120 miles the rate increased less than $10. (R. 283, 285.)

There was evidence that no traffic on the Atlantic Coast Line other than logs was handled on a lower rate basis than brick and road-building materials; that there was no traffic on its line in Georgia that had lower transportation characteristics than brick, gravel, and sand; that while logs might be charged a higher rate than sand or gravel because of their greater value, they should not, from a transportation standpoint; and that all three of these commodities were cheap, heavy, and without substantial claim risks. (R. 481, 508.)

There was testimony by Georgia manufacturers that merchantable timber on the Atlantic Coast Line could be purchased in northern Florida and that the rate advantage which Florida lumber companies enjoyed over Georgia manufacturers prevented the latter from competing with Florida companies for the purchase of timber in northern Florida. (R. 422–423, 432, 444, 446, 533, 544, 557.) While the Georgia manufacturers primarily desired to have the Cummer scale extended to Florida-Georgia commerce, they also strenuously insisted on parity between the rates and on the advantage to themselves of such parity. (R. 426, 427, 449, 537, 545, 548.)

The report proposed by the examiner of the Interstate Commerce Commission stated that complainant's evidence was mainly in support of its allegations under Sections 3 and 13. The examiner reported his opinion that the evidence did not jus-

tify the finding that the Florida intrastate rates of the Atlantic Coast Line violated either of those sections. (The examiner's report, although a part of the record before the District Court, was not included in the printed record before this Court, but it is being printed as a supplement to this record pursuant to a stipulation of the parties filed with the Clerk of this Court.)

In August, 1928, a division of the Commission found that the Florida-Georgia rates proposed by the Atlantic Coast Line for application between points on its railroad in northern Florida and Georgia destinations were reasonable, and it ordered the railroad to establish these rates for transportation of logs, except walnut, cherry, and cedar, from north Florida points to Georgia. (R. 16, 25, 27.) It found that the Atlantic Coast Line's log rates intrastate in Florida up to 170 miles resulted in undue prejudice to shippers from Florida into Georgia and in undue discrimination against interstate commerce and that this undue prejudice and undue discrimination could and should be removed by establishing Florida intrastate rates corresponding to those found reasonable for interstate application from Florida to Georgia. (R. 26.) It ordered the railroad to establish such rates for intrastate commerce within the State of Florida. (R. 27–28.) Appellants in Nos. 493 and 494 filed petitions for reargument and reconsideration directed to the whole Commission and appellant in No. 495 filed a like petition and a petition for leave

to intervene. (R. 818, 841, 865.) All of these petitions were denied by the full Commission. (R. 870.)

Suits to enjoin enforcement of this order were filed by appellants in Nos. 493, 494, and 495 in the United States District Court for the Northern District of Georgia. The opinion filed by that court construed the Commission's order as applying to intrastate rates only within the region in northern Florida covered by the Commission's order as to interstate rates and it entered decrees dismisisng the bills. (R. 44, 52, 901, 984.) Thereafter, on February 7, 1929, the day before the Commission's order was to become effective, the Commission issued a clarifying order which made the prescribed Florida intrastate rates applicable "within and throughout the entire State of Florida, without exception." (R. 54, 90.) Appellants thereupon filed supplemental bills in the same District Court and the court on rehearing entered a final decree in each suit dismissing the original and supplemental bills. (R. 170, 951, 1013.) The court held that the evidence would not justify a state-wide order altering the intrastate rate because of undue prejudice to shippers and localities, but held that the order was valid because there was sufficient evidence to support the Commission's finding that the assailed State rate was so low as to cause undue discrimination against the carriers' general interstate commerce. (R. 168–169.)

109512—30——3

SUMMARY OF ARGUMENT

1. Paragraph (4) of Section 13 of the Interstate Commerce Act authorizes the Interstate Commerce Commission to remove any undue discrimination against interstate commerce caused by an intrastate rate and paragraph (3) of Section 13 provides that the State shall be notified if any rate "made or imposed" by State authority is brought in issue before the Commission. This directory provision of paragraph (3) is not a jurisdictional limitation on the Commission's power under paragraph (4) and its authority under the latter paragraph extends to any intrastate rate, whether or not made or imposed by State authority. But even if the directory provision is a jurisdictional limitation, the Commission could deal with the Atlantic Coast Line's Florida log rates under Section 13 (4) since these rates were made or imposed by the State of Florida.

The terms of Section 13 (4), its purpose as construed by this Court in *Wisconsin R. R. Comm.* v. *C., B. & Q. R. R. Co.*, 257 U. S. 563, and its interpretation in decisions of the Commission clearly indicate that it permits the Commission, in any proceeding authorized by the Act where undue discrimination against interstate commerce is in issue, to act against any offending intrastate rate. The Commission therefore was authorized by the statute to make a finding in this case of undue discrimination against interstate commerce although the proceeding before the Commission was not

initiated for the sole purpose of increasing an intrastate rate and although it did not involve the entire rate structure of a State.

II. The complaint filed with the Commission charged that the Florida log rates of the Atlantic Coast Line caused undue discrimination against interstate commerce in violation of Section 13 (4) of the Commerce Act and asked relief against this violation. The intervention of certain railroads raised the same issue and it was indirectly raised by the answer of the Atlantic Coast Line. The complainant alone could not waive this issue and it also did not intend so to do. The examiner who conducted the hearing considered and passed upon this issue. Full opportunity was given to present evidence and arguments on the issue of undue discrimination against interstate commerce and the Commission's order directed to the removal of undue discrimination was based on a full hearing.

III. Where an order of the Commission interferes with a rate which has been put into effect in the affirmative exercise of the rate-making power of a State, a higher degree of proof may be required to sustain it than is required on a court review of other orders of the Commission. We submit that this requirement of a special degree of supporting evidence, if it exists, does not apply to the Commission's order increasing the Atlantic Coast Line's Florida intrastate log rates, since these rates were not put into effect by any exercise of the State of Florida's rate-making power. Where an order of

the Commission, as in this case, merely trenches, in the interest of interstate commerce, on the traditional reserved powers of the State, it is binding when supported by substantial evidence. *Colorado* v. *United States,* 271 U. S. 153. But whatever the degree of proof required, there was here convincing proof, in the form of a showing of the carrier's costs in transporting logs intrastate in Florida in relation to its revenue therefrom under the assailed rates, in the form of extensive and pertinent comparisons with other rates, and in the form of direct testimony, that the rates under attack were so low as to cause undue discrimination against interstate commerce.

ARGUMENT

I

THE ORDER OF THE INTERSTATE COMMERCE COMMISSION PRESCRIBING INTRASTATE FLORIDA LOG RATES TO BE CHARGED BY THE ATLANTIC COAST LINE WAS WITHIN THE SCOPE OF THE COMMISSION'S STATUTORY AUTHORITY UNDER SECTION 13 (4) OF THE INTERSTATE COMMERCE ACT

Appellants contend that the Interstate Commerce Commission could not regulate the Florida intrastate log rates of the Atlantic Coast Line under Section 13 (4) of the Act because these intrastate rates were not "made or imposed by authority of any State" within the meaning of Section 13 (3) of the Act. We submit that the authority given the Commission by Section 13 (4) is not limited to rates "made or imposed" by State authority and

that, in any event, the Atlantic Coast Line's Cummer scale was made or imposed by authority of the State of Florida.

The first two paragraphs of Section 13 permit the Commission to make investigations on complaint of any "person, firm, corporation, company, or association" or of any carrier or State railroad commission, or on its own motion. The third and fourth paragraphs of the section were added by the Transportation Act, 1920 (c. 91, sec. 416, 41 Stat. 484). Both paragraphs (3) and (4) deal with intrastate rates. Paragraph (3) permits the Commission to cooperate with State regulatory authorities having jurisdiction over railroads and also requires the Commission to notify the State if any investigation by the Commission involves an intrastate rate made or imposed by State authority. Paragraph (4) condemns any discrimination against interstate commerce by an intrastate rate and authorizes the Commission to remove such discrimination and also to remove any undue prejudice against persons or localities caused by the relation of an intrastate rate to an interstate rate.

Paragraph (3) begins:

> Whenever in any investigation under the provisions of this Act, * * *

Paragraph (4) begins:

> Whenever in any such investigation * * *

In so far as the words "such investigation," in paragraph (4) refer back to paragraph (3), they

seem to relate to the general provisions of paragraph (3) dealing with any investigation authorized by the Act involving an intrastate rate. We submit that these words in paragraph (4) do not incorporate as a jurisdictional limitation upon the authority of the Interstate Commerce Commission thereunder the directory provision of paragraph (3) that the State be notified whenever an intrastate rate involved in an investigation undertaken by the Commission was made or imposed by State authority. Such a construction must be rejected because not required by the words of the statute and because, if adopted, it would lead to the absurd result that the Interstate Commerce Commission could regulate intrastate rates when made or imposed by State authority but could not regulate them when not so made or imposed.

A second objection to appellants' contention is that sustained by the District Court, namely, that the Atlantic Coast Line's Cummer scale was "made or imposed" by authority of the State of Florida. As that court pointed out, the Atlantic Coast Line voluntarily initiated the Cummer scale only for trainloads of logs and the Florida Commission required it to be modified to apply to single-car movements before it permitted this tariff to be filed. (R. 46, 471.) The District Court further said (R. 46):

> * * * and independently of that fact, its status as a lawful rate depended upon its

> allowance by the Florida Commission. It was established as a rate in accordance with and under the laws of Florida, and was for this reason alone a rate made, though not imposed, by authority of that State.

Appellants also contend that Section 13 (4) permits the Interstate Commerce Commission to remove a discrimination against interstate commerce caused by an intrastate rate only in a proceeding involving the entire rate structure of a State or in a proceeding initiated for the sole purpose of increasing a rate or rates.

Paragraph (4) provides that whenever the Commission finds that any intrastate "rate, fare, charge, classification, regulation, or practice" causes undue preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, or unjust discrimination against interstate commerce, it shall prescribe the rate, fare, or charge thereafter to be charged and the classification, regulation or practice thereafter to be observed, in such manner as will, in its judgment, remove prejudice or discrimination. It seems impossible to interpret the authority thus disjunctively given over a rate, or a fare, etc., as meaning that the paragraph gives no power except in connection with regulation of the entire rate structure of a State. Moreover, a proceeding to regulate the entire rate structure or one initiated with the sole purpose of increasing intrastate rates is not appropriate to remove undue prej-

udice and paragraph (4) couples the power to remove undue discrimination with the power to remove undue prejudice.

The limitations upon the scope of paragraph (4) which appellants seek to read into it are not only wholly unsupported by its terms, but they are contrary to its purpose. In *Wisconsin R. R. Comm.* v. *C., B. & Q. R. R. Co.*, 257 U. S. 563, 584, *supra,* this Court said that paragraphs (3) and (4) of Section 13 and Section 15a were added to the Interstate Commerce Act by the Transportation Act, 1920; that Section 15a required the Commission so to prescribe rates as to enable the carriers as a whole, or in groups selected by the Commission, to earn an aggregate annual net railway operating income equal to a fair return on the aggregate value of the railway property used in transportation; and further (p. 586):

> If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. The effective operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. Section 15a confers no power on the Commission to deal with intrastate rates.

The Court therefore concluded (p. 586) that "it is impossible to escape the dovetail relation" between the provision of Section 13 (4) empowering the Commission to remove any undue discrimina-

tion against interstate commerce and the purpose of Section 15a.

If the purpose of Section 15a is to be carried out and adequate revenue from interstate commerce is to be maintained, the power of the Commission to adjust an intrastate rate which is so low as to place a burden upon the carrier's general interstate commerce should be available in any proceeding before the Commission authorized by the Act when the question of an intrastate rate discriminating against interstate commerce has been put in issue. It would seriously cripple the effectiveness of the power there given to the Commission in its dovetail relation to the purpose of Section 15a if this power could be exerted in only a narrowly limited class of proceedings, as suggested by appellants.

This Court has said that it was within the general powers of the Interstate Commerce Commission to establish intrastate rates on fertilizers and fertilizing material in Alabama on the ground that maintenance of such intrastate rates on a lower basis would result in unjust discrimination against, and undue prejudice to persons and localities in, interstate commerce. *Alabama* v. *United States,* 279 U. S. 229, 230.

The Interstate Commerce Commission has determined that an intrastate rate or practice was unduly prejudicial to, and unduly discriminatory against, interstate commerce, and has required a state-wide increase in the intrastate rate or prac-

tice in cases which were not initiated solely to increase intrastate rates and which involved only particular commodities. *Salt Cases of 1923,* 92 I. C. C. 388, 400–401; *New Mexico Corp. Comm.* v. *A., T. & S. F. Ry. Co.,* 93 I. C. C. 43, 48–49; *Southwestern Brick Cases,* 107 I. C. C. 681, 699; *Arkansas Jobbers & Mfrs. Asso.* v. *A., T. & S. F. Ry. Co.,* 118 I. C. C. 238, 242.

Appellants also suggest that the Commission's order increasing intrastate Florida log rates was invalid because it did not expressly provide that it was made without prejudice to the right of the State or of any other interested party to apply for modification. The orders of the Commission directing an increase in intrastate rates to remove discrimination against interstate commerce which were sustained in *Wisconsin R. R. Comm.* v. *C., B., & Q. R. R. Co.,* 257 U. S. 563, *supra,* and in *New York* v. *United States,* 257 U. S. 591, contained such a reservation. But the effect of the order here in question is not to "freeze" indefinitely Florida log rates on the Atlantic Coast Line. The Commission, apart from any reservation in its order regarding future modification, has the power and duty to modify its order if new conditions warrant a change. A rate order is not *res judicata.* Every rate order made may be superseded by another. *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 445.

II

THE ORDER OF THE INTERSTATE COMMERCE COMMISSION DIRECTING AN INCREASE IN THE ATLANTIC COAST LINE'S FLORIDA LOG RATES TO REMOVE AN UNDUE DISCRIMINATION AGAINST INTERSTATE COMMERCE WAS ISSUED AFTER A FULL HEARING

Appellants contend that the order of the Interstate Commerce Commission, in so far as it directed removal of a discrimination against interstate commerce by an increase in the Atlantic Coast Line's Florida log rates, was not supported by an adequate hearing. It is admitted that the complaint filed with the Commission charged, *inter alia,* that this log rate caused undue discrimination against interstate commerce in violation of Section 13 of the Commerce Act, and that the complaint asked the Commission to terminate this violation. (R. 196, 197). But appellants contend that the Georgia Public Service Commission during the hearing in effect waived any claim based on an increase in the Florida rates and that the drift of the testimony was to the same effect.

The Chairman of the Georgia Commission in urging counsel for intervening Florida lumber companies to state whether or not these intervenors opposed extending the Cummer scale to Florida-Georgia commerce said (R. 421):

> * * * that is all there is in the case, it is all that has ever been in the case, it is all we are asking for and all we hope to gain.

Taking this at its face value and disregarding the fact that the rate expert for the Georgia Commission appearing as a witness for that Commission treated the question of how the alleged prejudice and discrimination should be cured as an open one (R. 417, 706–707), we submit that a statement made in colloquy with opposing counsel is not sufficient to eliminate one of the issues made by the pleadings. We also submit that after other parties had intervened the Georgia Commission alone could not, without the consent of the Commission, eliminate one of the issues even by a formal waiver.

The petitions of intervention of the four intervening railroads and of the American Short Line Railroad Association alleged that they were opposed to the continuance of the Atlantic Coast Line's Florida intrastate log rates and that they considered these rates "unduly and unreasonably low." (R. 226, 228.) The answer of the Atlantic Coast Line denied that its Florida-Georgia rates were unjust or unreasonable, but neither affirmed nor denied the allegation of the complaint that its Florida rates were discriminatory against interstate commerce. (R. 199–200.) Since the relation of the Florida rates to the Florida-Georgia rates was admittedly in issue, this answer necessarily led to the conclusion that if relief were to be granted the Florida rates should be raised. In addition the Atlantic Coast Line offered testimony tending to show that its Florida rates were unreasonably

low. Its chief witness referred to them as "abnormally low" and "far below the level of reasonable log rates," and he doubted exceedingly whether they were compensatory. (R. 475, 477, 492.) The railroad introduced a cost study of its Florida log transportation which, when applied to the revenue therefrom, produced a negligible per-car revenue. (R. 294, 522.) It offered schedules comparing the per-car revenue from its Florida log rates with the per-car revenue from its Florida, Georgia, and Florida-Georgia rates on commodities moving at the lowest rates. (R. 279, 282, 284.)

Certain of the petitions of intervention of the Florida lumber companies alleged that their interest was to prevent an increase in the Atlantic Coast Line's Florida log rates and that these rates were remunerative. (R. 214–215, 219, 232.) The only testimony introduced by the Florida Commission was on the remunerativeness of these rates. It seems abundantly clear that it was never understood that the parties to the proceeding had by universal consent eliminated from the case an increase in Florida rates as a possible means of removing prejudice or discrimination. The report of the examiner who heard the testimony discussed whether the evidence would justify a finding that the Florida rates were so low as to constitute a burden on interstate commerce. (*Supra,* pp. 13–14.)

The Florida interests having been afforded am-

ple opportunity to present their evidence and arguments in support of a continuation of the Cummer scale of rates as against a charge of discrimination against interstate commerce, the test of a sufficient hearing before the Interstate Commerce Commission as laid down by this Court in *New England Divisions Case,* 261 U. S. 184, 200, is fully satisfied.

III

THERE WAS SUFFICIENT EVIDENCE TO SUSTAIN THE FINDING OF THE INTERSTATE COMMERCE COMMISSION THAT THE ATLANTIC COAST LINE'S FLORIDA INTRASTATE LOG RATES CAUSED UNDUE DISCRIMINATION AGAINST INTERSTATE COMMERCE

Discrimination is a mixed question of law and fact on which the determination of the Interstate Commerce Commission is conclusive when supported by any substantial evidence. *Virginian Ry.* v. *United States,* 272 U. S. 658, 663; *Interstate Commerce Commission* v. *Union Pacific Railroad Company,* 222 U. S. 541, 547–548.

Appellants suggest that the usual rule governing court review of orders of the Commission which are attacked as having been made without supporting evidence does not apply to an order of the Commission affecting intrastate rates, at least where the Commission has ordered an intrastate rate increased in order to remove discrimination against interstate commerce.

In *American Express Co.* v. *Caldwell,* 244 U. S. 617, 627, this Court, in considering the correct meaning of an order of the Commission, said that

where orders of the Commission affect intrastate rates it is desirable that they be so definite as to preclude misapprehension. In *Ill. Cent. R. R. Co.* v. *Public Utilities Comm.*, 245 U. S. 493, the Court was also called upon to interpret an order of the Commission. It said that Federal statutes enacted under the commerce clause were not held to supersede or suspend the exercise of the reserved powers of the State except so far as the statutes clearly manifested such a purpose, and (p. 510)—

> This being true of an act of Congress, it is obvious that an order of a subordinate agency, such as the Commission, should not be given precedence over a state rate statute otherwise valid, unless, and except so far as, it conforms to a high standard of certainty.

In *Wisconsin R. R. Comm.* v. *C., B. & Q. R. R. Co.*, 257 U. S. 563, 580, *supra,* the Court, in holding that the evidence of discrimination against persons or localities would not sustain the Commission's order directing a state-wide increase in intrastate rates prescribed by a State statute, quoted from the foregoing portion of its opinion in the *Illinois Central case.*

It may be that when the Interstate Commerce Commission changes a rate *prescribed* by a State, either by its legislature or by a commission, the courts will exact a higher degree of supporting evidence than in other cases where orders of the Commission are attacked. But where no affirma-

tive State action has been taken and the Commission's order merely trenches upon the traditional powers of the State, there would seem to be no occasion to depart from the usual rule that the courts will not interfere with the Commission's exercise of administrative discretion. This Court has upheld an order of the Commission permitting a railroad to abandon a branch line operated wholly within a State, where, as in this case, the State appeared in the proceedings before the Commission and later brought suit to enjoin the Commission's order on the ground, among others, that it was not supported by evidence. *Colorado* v. *United States,* 271 U. S. 153, *supra.* Nothing in the opinion in that case suggests that a special degree of supporting evidence was requisite.

In the present case the Atlantic Coast Line's Cummer scale of rates was not due to any affirmative action by the Florida Commission. While legally sanctioned by that commission its representatives referred to them at the time they were filed as practically discriminatory and barely remunerative and as made effective contrary to the advice and wishes of the Florida Commission. (R. 271, 272.) In this case, therefore, the Commission's order merely cuts across, in the interest of interstate commerce, certain powers ordinarily reserved to the State, and it does not interfere with rates established in the exercise of a State's rate-making power. We submit that this is not a proper case in

which to establish a novel doctrine concerning the degree of proof necessary to sustain the validity of an order of the Interstate Commerce Commission.

Evidence in support of the Commission's finding that the Cummer scale of rates was so low as to result in undue discrimination against interstate commerce included (a) a cost study of actual operations thereunder, (b) comparison with other log rates, including several approved by the Interstate Commerce Commission and by State commissions, (c) comparison of revenue from the Cummer scale of rates with revenue from rates on other low-grade commodities, and (d) direct testimony of railroad operatives and rate experts that the rates were unduly and unreasonably low.

The Atlantic Coast Line's cost study furnished facts from which the Commission might have concluded that transportation under the Cummer scale of rates was not remunerative. It showed, when compared with the revenue receivable on the basis of average loadings handled on the same line, a net return of $1.34 a car. (R. 23.) But the study was based on trainload movements which could be handled at much less cost than single cars or a few cars attached to regular freight trains. (R. 23, 476–477.) The month covered was one of the least expensive for Florida logging operations on the Atlantic Coast Line. (R. 530.) No allowance was made for interest on investment except on equipment used. (R. 23.) The study involved "certain

arbitrary assumptions," as any study of railroad transportation costs for a single commodity involves allocation of indirect cost, taxes, etc., on assumptions that are more or less arbitrary. The District Court was of the opinion that the Commission, in rejecting the "conclusion of slight net income" shown by this study, "did not rule out the basic facts shown." (R. 169.)

The Cummer scale was so materially lower as to be wholly out of line with all of the numerous log rates in effect in the southeast, including Florida, shown in the record. It was, except for very short distances, less than half (1) interstate log rates in the southeast approved by the Interstate Commerce Commission in other investigations, (2) Alabama intrastate log rates approved by its Commission, (3) Georgia intrastate log rates approved by the Georgia Commission but suspended because of the Florida log rate situation on the Atlantic Coast Line, (4) Florida intrastate log rates on other railroads, and (5) the log rates found reasonable by the Interstate Commerce Commission in this case for application between northern Florida and Georgia on the Atlantic Coast Line, which finding has not been attacked. (*Supra*, pp. 6–7, 11.) The Florida intrastate log rate of the Atlantic Coast Line was over 125% higher for 180 miles than for 170 miles, where the Cummer scale ended, although the increase for the next 120 miles was only 18%. (R. 284–285.)

Almost equally convincing is the showing that, except for short distances, the per-car earnings under the Cummer scale were, generally speaking, only one-third of the per-car earnings on brick, limestone, sand, lime and cement (commodities carried at the lowest rates) transported for equal distances on the Atlantic Coast Line's railroad intrastate in Florida, intrastate in Georgia and interstate Florida-Georgia. (*Supra,* p. 12.) For example, at 70 miles the per-car earnings under the Cummer scale were $12.65 and on the other commodities just mentioned moving intrastate in Florida they were, respectively, $41.08, $47.84, $41.09, $49.76, and $75.69. (R. 285.) At 170 miles like earnings under the Cummer scale were $20.35 and on the other commodities moving intrastate in Florida, respectively, $58.79, $70.98, $61.72, $66.18, and $99.74. (R. 285.)

The District Court, after briefly reviewing the evidence of other rates, including log rates, said (R. 169):

> All these rates were shown to be from twice to thrice the attacked log rate. On the face of things the log rate is too low and likely to burden the carrier.

Witnesses for the Atlantic Coast Line, the Seaboard Air Line and the Central Georgia Railway all testified that the Cummer scale was unduly low. (R. 439, 456, 477.) The Chairman of the Florida Commission so described them shortly after they were filed. (R. 272.)

Appellants take the position that it is improper to base a finding of discrimination against interstate commerce as a whole on mere disparity of rates. But if the unreasonableness of a rate can be shown by disparity, there seems to be no reason why unremunerativeness can not be shown by the same evidence. In *Louisville and Nashville R. R. Co.* v. *United States,* 238 U. S. 1, this Court upheld a decision of the Interstate Commerce Commission which found an existing rate unreasonable and established a lower rate although the complainant before the Commission did not seem to have attempted to prove the cost or value of the carrier's service, but had relied largely on proof that the rate in question was higher than that charged for a similar haul to other points. This Court said (pp. 15–16):

> Giving the widest possible effect to the fact that mere comparison between rates does not necessarily tend to establish the reasonableness of either, it is still true that, when one of many rates is found to be higher than all others, there may arise a presumption that the single rate is high. And when to that is added the fact that some of the comparative and lower rates had been prescribed by the Commission, there was at least a *prima facie* standard which, after allowing for dissimilarity in conditions, might be used along with all the other evidence in order to test the reasonableness of the Nashville rate.

The evidential worth of disparity of rates to show that a rate is too low or too high should not be determined by legalistic rules of general application, but by the intrinsic persuasiveness of the evidence in individual cases. The intrinsic persuasiveness of such evidence could hardly, we believe, be stronger than here. The rate comparisons cover transportation on the railroad whose rate was attacked and on other railroads, in the same State and in neighboring States, and rates approved by the Federal and State Commissions. Among the numerous rates put in evidence there was substantial uniformity and the deviation in the case of the Cummer scale of rates, which the Florida Commission had condemned when it was first established, was so great as to lead irresistibly to the conclusion either that the entire rate level on logs in the southeast was unduly and unreasonably high or that the Cummer scale of rates was unremunerative. The Commission surely did not transgress the limits of its discretion if, faced with these alternatives, it gave weight to its own decisions and those of similar State Commissions. The Commission did not thereby rest its order upon evidence not legally before it, as condemned by this Court in *United States* v. *Abilene & So. Ry. Co.*, 265 U. S. 274, 286.

Appellants make the contention that the intrastate Florida rates established by the Commission for the Atlantic Coast Line are so high that traffic would not move under them and that to diminish

traffic could not be an aid to interstate commerce. But unremunerative traffic burdens interstate commerce and the loss of it removes a discrimination against such commerce. In addition, any prediction as to the effect upon traffic of a change in rates is highly speculative, and upon such speculative questions this Court will not substitute its judgment for that of the Commission.

Finally, the Atlantic Coast Line, which would be directly affected if a change in rates would produce less net income, was favorable to a change in the Cummer scale. That railroad would not to-day voluntarily adopt the Cummer scale, and no sacrifice was foreseen from an advance in its Florida log rates to the level ordered by the Commission. (R. 491, 510.) The railroad has intervened in support of the Commission's order, thus confirming the position taken by its witnesses before the Commission.

There was evidence of a probable very extensive Florida intrastate log movement over the Atlantic Coast Line railroad if the Cummer scale of rates were continued, with a resulting heavy burden on interstate commerce if these rates are not compensatory. The Wilson Cypress Company had 250,000,000 feet of uncut timber. (R. 336.) Since carloads average 4,200 feet per car, this uncut timber is equivalent to 59,524 carloads. (R. 571.) The difference in freight between the Cummer scale and that ordered by the Commission for the 120 miles of transportation for these logs is 3.3¢ per 100 pounds,

or $19.80 for a carload of the average weight of 60,000 pounds. (R. 22, 571, 573, 584–585.) For 59,524 carloads the freight difference on this basis is over $1,125,000.

The Brooks-Scanlon Corporation owned timber equivalent to approximately 186,800 carloads. (R. 378–379.) Shipments would be about equally divided between two towns 145 and 160 miles from its mill. (R. 680.) The average increase in rates ordered by the Commission for these two distances is 3.85¢ per 100 pounds, or $23.10 per carload of 60,000 pounds. (R. 22.) For 186,800 carloads the freight difference on this basis is over $4,300,000.

CONCLUSION

It is respectfully submitted that the decree below should be affirmed.

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APRIL, 1930.

APPENDIX

The Interstate Commerce Act provides:

Section 3. (1) That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. (c. 104, 24 Stat. 380; c. 91, 41 Stat. 479; U. S. C. title 49, sec. 3.)

Section 13. (1) That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained

of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

(2) Said commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(3) Whenever any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commis-

sion, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the deci-

sion or order of any State authority to the contrary notwithstanding. (c. 309, 36 Stat. 550; c. 91, 41 Stat. 484; U. S. C. title 49, sec. 13.)

Section 15a. (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: *Provided,* That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country. (c. 91, 41 Stat. 488; U. S. C. title 49, sec. 15a.)

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 16.

STATE OF FLORIDA AND A. S. WELLS, E. S. MATHEWS, ET AL., APPELLANTS,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 17.

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, AND CUMMER CYPRESS COMPANY, APPELLANTS,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 18.

WILSON LUMBER COMPANY OF FLORIDA, APPELLANT,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

MEMORANDUM ON DISCRIMINATION.

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MEMORANDUM ON DISCRIMINATION.

The Minnesota Rate Cases (230 U. S. 352) mark an expression of the development of the law, as stated in

Gibbons *vs.* Ogden, 9 Wheat. 1, applied to the highly developed commerce of the present day. The court there divided the subject into that action of the State which imposes a direct burden upon interstate commerce and that action of the State which conflicts with the provisions of the Act to Regulate Commerce. It there clearly set apart interstate commerce as a unit upon which burdens may be placed by the action of a state and for the removal of which burden the Federal Government has ample power. The court also determined that matters which fall within the state power are also by reason of their relation to interstate commerce within the reach of the Federal power and that Congress must be the judge of the necessity of Federal action, and that the action of the state in dealing with internal commerce, which undertakes to regulate instrumentalities which are also used in interstate commerce, is necessarily subject to the exercise by Congress of its authority to control such instrumentalities so far as may be necessary for the purpose of enabling it to discharge its constitutional functions.

The Shreveport case, 234 U. S. 342, applied the doctrine of the Minnesota case to practically the same conditions as in the Minnesota case, except that Congress, through the Interstate Commerce Commission, had in the Shreveport case exercised its power and had declared that the action of the State constituted discrimination against interstate commerce. Then the Government, declaring that wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control

of the other it is Congress and not the State that is entitled to prescribe the final and dominant rule, set aside and held for naught the action of the State government in doing that which the Interstate Commerce Commission had determined was a discrimination against interstate commerce. That decision also declared "that the power to deal with the relation between the two kinds of rates, as a relation, lies exclusively with Congress". The court also discussed the discrimination which is prohibited by Section 3 of the Act; that discrimination being "any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever". The court declared that this language was "certainly sweeping enough to embrace all the discriminations of the sort described which it was within the power of Congress to condemn; and also declared that "there is no exception or qualification with respect to an unreasonable discrimination against interstate traffic produced by the relation of intrastate to interstate rates as maintained by the carrier".

The next development came with the adoption of the Federal Control Act by Congress, March ~~21, 1918,~~ 1920 and with it the amendments to the Interstate Commerce Act, especially those parts thereof which find expres-

sion in Sections 13 and 15*a*; the latter requiring the Commission from time to time to determine and make public what percentage of the aggregate property value of the railroads constitutes a fair return thereof, and to establish the rates so that the carriers as a whole (or as a whole in each of the rate groups or territories) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, etc., earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers.

Section 13 gave to the Commission the express statutory power to remedy any rate, fare, charge, classification, regulation or practice as to intrastate business which causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other; or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and also gave it power to prescribe such rates, regulations and practices as in its judgment would remove such advantage, preferance, prejudice or discrimination.

We know that the purpose of this Act was to put into statutory power and to prescribe procedure for its exercise that power which the Supreme Court has recognized to be in the Commission in the Shreveport case. (See Board of Railroad Commissioners *vs.* Great Northern Railway, 281 U. S. 412, 426.) The committee reporting that bill to the House stated that

"we have incorporated into law the decision of the court".

It is plain from the historical circumstances, as well as from the official declarations of the Chairman of the Committee on Interstate and Foreign Commerce of the House of Representatives when presenting the bill, that one of the discriminations intended to be relieved was that worked by "the low level of the intrastate rates" as compared with the higher level of interstate rates. Expressions to the same effect were made in the Senate.

The Wisconsin case and the New York case, 257 U. S. 563 and 591, made declaration of the purpose of the amendments of 1920 to give the Commission the statutory power to cure discriminations not only against persons, localities, particular descriptions of traffic, etc., but against the unit interstate commerce. That purpose, finding direct expression in the Wisconsin case, is but a restatement of the same principle in the Minnesota case, to which reference has been above made.

The same thought is expressed in the New York case at page 601 of 257 U. S., as follows:

> "If the lower level of intrastate fares and rates is to be maintained, it will discriminate against interstate commerce, in that it will require higher fares and rates in the interstate commerce of the State to secure the income from which the Interstate Commerce Commission must attempt to provide by fixing rates under Section 15*a* of the Interstate Commerce Act, as amended by § 422 of the Transportation Act of

> 1920, 41 Stat. 456, 488, in carrying out the declared congressional purpose 'to provide the people of the United States with adequate transportation'. As we have just held in the Wisconsin Rate Case, this constituted 'undue, unreasonable, or unjust discrimination against interstate commerce'."

This latter expression is but a reincarnation of that part of the Shreveport case (234 U. S. 354) which declares:

> "It is immaterial, so far as the protecting power of Congress is concerned, that the discrimination arises from intrastate rates as compared with interstate rates. The use of the instrument of interstate commerce in a discriminatory manner so as to inflict injury upon that commerce, or some part thereof, furnishes abundant ground for Federal intervention."

The "instrument" of interstate commerce is the interstate carrier and "where this evil consists in the action of an interstate carrier in unreasonable discrimination against interstate traffic over its line, the authority of Congress to prevent it is equally clear".

We follow this up with the New England Divisions Case, 261 U. S. 184, which holds that the Commission in establishing divisions of joint rates is authorized to consider "not only what is just and reasonable and equitable as between all the carriers participating, but also the financial needs of particular carriers which should be supplied in the public interest, in order to maintain them in effective operation as part of the adequate transportation system".

We find the same thought expressed in U. S. *vs.* Illinois Central, 263 U. S. 515, 525, where the court holds that the interest of the individual carrier must yield in many respects to the public need; and the newly conferred power to grant relief against rates unreasonably low may afford protection against injurious rate policies of a competitor which were theretofore uncontrollable.

We find the same principle reuttered in Dayton-Goose Creek Ry. *vs.* U. S., 263 U. S. 456, 485, when the court declares that:

> "When the adequate maintenance of interstate commerce involves and makes necessary on this account the incidental and partial control of intrastate commerce, the power to exercise such control has been clearly established."

This case confirmed the right of recapture of excess earnings, all for the purpose of making a better system of interstate carriage.

The District Court in Wallower *vs.* U. S., 32 Fed. (2d) 524, 526, declared the effect of the amendments to the Interstate Commerce Act, wrought by the Transportation Act, as follows:

> "By the Transportation Act of 1920 the powers of the Interstate Commerce Commission were greatly broadened. Therefore their duties were largely negative, to prevent discrimination, unfair practices, unreasonable rates, and improper capitalization. By the amendment their duties became affirmative—to maintain adequate transportation service; to foster weak lines; to protect against ruinous competition."

This is but a condensation of expressions from the Supreme Court.

The individual carrier, while still an object of protection and regulation by the Commission and the courts, has become, within the meaning and purposes of the Interstate Commerce Act, a part of a group, and its individual interest is to be considered in its connection with its group, to the end that the Nation may have an efficient transportation system. The earning capacity and the financial resources of the individual carrier have now become a matter of national concern (270 U. S. 277). On the same basis follow the cases which deal with abandonment of lines, the taking on of new lines, and the issuance of new securities and building into competitive fields.

Preference or advantage and prejudice and disadvantage take on now their meaning consistent with the purposes of the Act as amended, for, of course, the amendments are to be read with the old part of the Act and the old part with the amendments. Giving to the log traffic an unduly low rate in intrastate commerce is an advantage to that particular description of traffic. It makes a disadvantage and a preference against other classes of traffic, including interstate commerce. The performance of that service on the rates involved requires the making up from other classes of traffic those earnings which are essential to the railroad in making the earnings contemplated under Section 15*a* as necessary to make "a fair return on the aggregate value of the railway proper".

In addition to that, the rates for interstate earnings are fixed by the Interstate Commerce Commission.

They are fixed in this proceeding; they are in harmony with the other state and intrastate earnings on the same commodity in the same general territory; they are wholly out of harmony with those rates fixed in this proceeding and accepted by shippers and carriers and by the Georgia Public Service Commission. Congress has exerted its power through its instrument, the Interstate Commerce Commission; that has been done on abundant evidence; it not only justifies the finding of the Commission, but compels it.

The rate thus established by the Commission was at least a *prima facie* standard for testing the reasonableness of the rate under investigation.

L. & N. Railroad *vs.* U. S., 238 U. S. 2.

The comparisons do not rest alone upon rates fixed by the Commission in this proceeding, but upon rates fixed by it in other proceedings for like territory.

The record shows the points of origin of the large shipments of logs in Florida; the points of destination and the rates; the quantity of timber that is standing in each tract. It shows the interstate rates on corresponding movements and it shows that the average load per car of timber is about 4,200 feet and it shows the number of board feet in the average car from each shipping point. With these quantities at hand it is easy to ascertain the gross amount of revenue that will be collected by the Atlantic Coast Line under the Cummer scale of rates and the revenue which will be collected on the same movements if rates equal to the interstate scale had been collected. Thus it can be

very easily ascertained that the revenue on shipments moving from the Hines section and from Otter Creek, Homosassa, and Withlacoochee River, and from Perry and Carbur, will amount to $6,324,271.00. That is by no means all the revenue to be affected, but it is sufficient to show that the revenue involved is enormous.

Transportation Conditions in Southern Territory.

The Commission in Southern Class Rate Investigation, 113 I. C. C., 200, 205 (July 19, 1926), determined that "transportation conditions are so similar throughout southern territory, with the exception of the Florida Peninsula, that one level of class rates should prevail."

The Commission stated in North Carolina Pine Association vs. A. C. L. Ry. Co., 85 I. C. C. 270, 296 (December, 1923), that the Florida Peninsula south of the line of the Seaboard Air Line extending from Jacksonville to River Junction is divided into five zones. These zones carried graduated rates in excess of the Georgia main line rates over the Atlantic Coast Line.

Respectfully submitted,

F. B. GRIER,
CARL H. DAVIS,
W. E. KAY,
ROBERT C. ALSTON,
Attorneys for Atlantic Coast Line R. R. Co.

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Office Supreme Court,
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IN THE

Supreme Court of the United States

Nos. 16, 17, 18—OCTOBER TERM, 1930

STATE OF FLORIDA *and* A. S. WELLS, E. S. MATHEWS, *et al*,
Appellants
vs
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, *et al.*

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, *and* CUMMER CYPRESS COMPANY,
Appellants
vs
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, *et al.*

WILSON LUMBER COMPANY OF FLORIDA,
Appellant
vs
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, *et al.*

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

MOTION BY ATLANTIC COAST LINE RAILROAD CO. *and* GEORGIA PUBLIC SERVICE COMMISSION

IN THE

Supreme Court of the United States

Nos. 16, 17, 18—OCTOBER TERM, 1930

STATE OF FLORIDA *and* A. S. WELLS,
E. S. MATHEWS, *et al*,
Appellants
vs
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WILSON CYPRESS COMPANY, *and*
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Appellants
vs
UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION, *et al.*

WILSON LUMBER COMPANY OF FLORIDA,
Appellant
vs
UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION, *et al.*

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

MOTION BY ATLANTIC COAST LINE RAILROAD CO.

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Atlantic Coast Line Railroad Company, one of the appellees in the above mentioned cases, respectfully avers:

1.

That heretofore on the 5th of January, 1931, this Court handed down its opinion reversing the decree of the United States District Court for the Northern District of Georgia, specially organized in the manner provided by the statutes.

2.

The subject matter of that litigation was an order of the Interstate Commerce Commission fixing rates for the intrastate transportation of logs over the Atlantic Coast Line Railroad Company for distances up to 170 miles in the State of Florida. The District Court in its aforementioned decree upheld the order of the Commission and the said order went into effect on the 8th day of February, 1929.

3.

In its opinion this Court states:

> "The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this Court has recently adverted (The Beaumont, Sour Lake & Western Railway Company v. United States, decided November 24, 1930, 282 U. S.....), but of the

lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported. If the facts as to intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination as against interstate commerce either as between persons and localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require."

4.

Atlantic Coast Line Railroad Company respectfully represents that after the 8th day of February, 1929, the said effective date of the Commission's order, certain of the appellants stopped, or practically stopped, shipping logs of the kind involved in this proceeding over the lines of the Atlantic Coast Line Railroad Company in intrastate commerce in Florida, but the Wilson Cypress Company continued to ship in large quantities from the northwestern part of the peninsula of the State of Florida from and near the station known as Hines, on the Perry branch of this movant's lines, to its mills at Palatka, which is on or near the eastern coast of the State, in Putnam County, a distance of about 94 miles south of the Georgia-Florida State line and about 120 miles from the point of origin.

Those shipments amounted to approximately 6,550 carloads up to the first day of January, 1931, and like shipments are continuing.

5.

Movant represents that evidence before the Interstate Commerce Commission, which was considered by the Commission, was, in movant's opinion, entirely sufficient to justify findings of fact by the Commission showing unlawful discrimination against persons, places and particular classes of traffic; and that it was, in movant's opinion, also sufficient to justify findings of additional facts to comply with the requirements of the law as stated in this Court's said opinion as to discrimination against general interstate commerce.

6.

Movant represents that it is to the interest of justice that the status fixed by the Commission's order, which has been in effect from the 8th day of February, 1929, as aforesaid, be maintained until the Commission has again considered the record and the cause in the light of this Court's said opinion. It is likely that, if the Court's order becomes effective without further hearing and action by the Commission, it may bring a demand against the Atlantic Coast Line Railroad Company for substantial reparations, and that a failure to have further determination of the subject matter by the Commission may do this movant a great injustice for which there will be no relief, and in the meantime the rates here involved will continue to be an unjust discrimination against interstate commerce and against persons and places and particular classes of traffic, thereby

working irreparable damage not only to this movant but to the public.

7.

Movant avers its willingness to enter into bond, with satisfactory surety, conditioned that it will hold harmless the appellants, or either of them, or any shipper who may be injured or damaged by the direction of the Court herein prayed for; or otherwise conditioned as may be by the Court deemed proper.

8.

Movant cites as authority for the granting of the relief here prayed:

Rule 34, Judicial Code 1928, §377;

Ex Parte The Milwaukee Railroad Co., 5th Wall. 188;

Smith vs. Illinois Bell Telephone Co., decided Dec. 1, 1930, U. S. Sup. Ct. Advance Opinions 1930-1931, Vol. 3, pp. 99, 112;

Watts, Watts & Co. vs. Unione Austriaca, 248 U. S., 9-21.

WHEREFORE, this movant prays:

1. That an order be entered staying the sending down of the mandate in this case;

2. That notice of this motion be given to the other parties to this cause and that they be required to show cause, if any they have, why the prayers of this motion should not be granted;

3. That this Court enter such order as it may deem wise, either staying the mandate in this Court until the Commission

has acted in this cause in the light of the opinion of this Court entered therein, or until this Court shall, for cause shown, otherwise direct; or

4. That this Court, in sending down its mandate to the District Court for the Northern District of Georgia, direct the said Court to maintain the status as to the said intrastate rates now existing until the said Commission shall have acted or until the said Court, for cause shown, shall have otherwise ordered.

5. Movant prays for such further and other orders as the Court may deem appropriate.

Respectfully submitted,

ATLANTIC COAST LINE RAILROAD COMPANY,

By Robert C. Alston
of Counsel

F. B. GRIER,
CARL H. DAVIS,
W. E. KAY,
ROBERT C. ALSTON,
BLAIR FOSTER,

Attorneys for Atlantic Coast Line Railroad Company.

UNITED STATES OF AMERICA
STATE OF GEORGIA
COUNTY OF FULTON

Before me, the undersigned officer, duly authorized to administer oaths in said State and County, personally appeared .....Robert C. Alston....., who being by me duly sworn deposeth and saith on oath that he is counsel for the Atlantic Coast Line Railroad Company and as such is familiar with the matters and things involved in the foregoing motion and is authorized to make this affidavit. Deponent says that the matters and things therein set out, where stated as matters of fact, are true, and, where stated as matters of opinion, he verily believes them to be true.

.....Robert C Alston.....

Sworn to and subscribed before me,
this..21..day of January, 1931.

Copy

.....Margery Davenport.....
Notary Public, Georgia, State at Large.
My Commission Expires Dec. 26, 1932

IN THE

Supreme Court of the United States

Nos. 16, 17, 18—OCTOBER TERM, 1930

STATE OF FLORIDA *and* A. S. WELLS,
E. S. MATHEWS, *et al*,
Appellants

VS

UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION, *et al.*

BROOKS-SCANLON CORPORATION,
WILSON CYPRESS COMPANY, *and*
CUMMER CYPRESS COMPANY,
Appellants

VS

UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION, *et al.*

WILSON LUMBER COMPANY OF FLORIDA,
Appellant

VS

UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION, *et al.*

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

MOTION BY GEORGIA PUBLIC SERVICE COMMISSION

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Georgia Public Service Commission, one of the appellees in the above entitled cases, respectfully shows:

1.

The proceedings before the Interstate Commerce Commission, out of which grew the subject matter of this litigation, were had on the petition (R. 193) of this movant, which is the duly constituted authority established by the State of Georgia having regulatory jurisdiction over carriers by railroad in Georgia. Before filing said petition, this Commission had undertaken to fix reasonable rates for intrastate transportation of logs of the description involved in these cases and found it impracticable to do so because of the extraordinary conditions in the transportation of such logs in intrastate in Florida. After undertaking to amicably adjust said conditions, the petition was filed and the proceedings had as shown by the record which has been presented to this Court.

2.

Movant is informed of the motion which is being made by the Atlantic Coast Line Railroad Company requesting the stay of the mandate of this Court while this cause is being resubmitted to the Interstate Commerce Commission and is being acted upon by it, in accordance with this Court's said opinion, which was handed down on the 5th day of January, 1931, or that this Court, in issuing its mandate, give direction to the District Court

of the United States for the Northern District of Georgia, to the end that said Court may, by proper orders, protect the present status pending the proceedings before the Interstate Commerce Commission, or until the further order of this Court. This movant respectfully represents that, in its opinion, this, or some other direction equivalent thereto, should be given.

3.

The opinion of this Court indicates that there should be further consideration by the Interstate Commerce Commission.

4.

The Interstate Commerce Commission's order went into effect on the 8th day of February, 1929, and, if that status is interrupted, it may have the effect of restoring the intrastate rates originally complained of. The said rates set aside by the order of the Interstate Commerce Commission have not only deterred this movant in the exercise of its rate-making functions as to intrastate rates in Georgia on such logs, but they are unreasonable and work a destructive and unjust discrimination as to persons, places and particular classes of traffic, and as well against general interstate commerce. The Interstate Commerce Commission, after long hearing, has so found and ordered, but its order was not supported, as this Court has determined, by findings sufficiently definite.

In the opinion of this movant, the record already presents ample evidence to justify findings by the Interstate Commerce Commission of discrimination against persons, places and particular classes of traffic, and also generally against interstate

commerce, fully complying with the requirement of this Court's opinion.

This movant respectfully prays that the relief sought in the motion of the Atlantic Coast Line Railroad Company be granted.

Respectfully submitted,

GEORGIA PUBLIC SERVICE COMMISSION,

By ..... Jas. A. Perry .....
Chairman.

UNITED STATES OF AMERICA
STATE OF GEORGIA
COUNTY OF FULTON

Before me, the undersigned officer, duly authorized to administer oaths in said State and County, personally appeared JAS. A. PERRY, who being by me duly sworn deposeth and saith on oath that he is Chairman of the Georgia Public Service Commission; that he is familiar with the matters and things set out in the foregoing motion and that the same are true, except where stated upon information and belief, and those he verily believes to be true.

..... Jas. A. Perry .....

Sworn to and subscribed before me,
this 21 day of January, 1931.

copy

Margery Davenport
Notary Public, Georgia, State at Large
My Commission Expires Dec. 26, 1932

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CHARLES ELMORE

IN THE

Supreme Court of the United States

October Term, 1930.

No. 16.

STATE OF FLORIDA and A. S. WELLS, E. S. MATHEWS, et al.,
Appellants,
v.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al.,
Appellees.

No. 17

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, and CUMMER CYPRESS COMPANY,
Appellants,
v.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al.,
Appellees.

No. 18.

WILSON LUMBER COMPANY OF FLORIDA,
Appellant,
v.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, et al.,
Appellees.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

APPELLANTS' MEMORANDUM UPON THEIR OBJECTIONS TO THE FILING OF THE MOTIONS OF THE ATLANTIC COAST LINE RAILROAD COMPANY AND GEORGIA PUBLIC SERVICE COMMISSION TENDERED FOR FILING JANUARY 23, 1931, AND TO THE ISSUANCE OF THE RULE THEREBY SOUGHT.

For the Appellants in Nos. 16, 17, and 18.
STATE OF FLORIDA, et al.,
BROOKS-SCANLON CORPORATION, et al.,
WILSON LUMBER COMPANY OF FLORIDA.
FRED. H. DAVIS,
T. T. TURNBULL,
HENRY P. ADAIR,
CHARLES E. COTTERILL,
AUGUST G. GUTHEIM,
H. PLANT OSBORNE,
J. V. NORMAN,
Solicitors.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 16.

STATE OF FLORIDA AND A. S. WELLS, E. S. MATHEWS, ET AL., *Appellants*,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees*.

No. 17.

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, AND CUMMER CYPRESS COMPANY, *Appellants*,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees*.

No. 18.

WILSON LUMBER COMPANY OF FLORIDA, *Appellant*.

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellees*.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

APPELLANTS' MEMORANDUM UPON THEIR OBJECTIONS TO THE FILING OF THE MOTIONS OF THE ATLANTIC COAST LINE RAILROAD COMPANY AND GEORGIA PUBLIC SERVICE COMMISSION TENDERED FOR FILING JANUARY 23, 1931, AND TO THE ISSUANCE OF THE RULE THEREBY SOUGHT.

The Atlantic Coast Line Railroad Company (appellee here, intervener in the District Court below, and *defendant* in the late proceeding before the Interstate Commerce Commission), and the Georgia Public Service Commission (appellee here, intervener in the District Court below and *complainant* in the late proceeding before the Interstate Commerce Commission) tendered for filing in this Court on or about January 23, 1931, their respective motions praying that the Court stay its mandates in the foregoing causes or that it so shape its mandates that the District Court may have authority to continue in effect the intrastate rates prescribed by the Interstate Commerce Commission by the order of that Commission which this Court by its decree has ordered set aside.

The appellants *in limine* objected and do object to the filing of the motions in question and to the issuance of the rule sought by such motions for the reasons hereinafter set forth, viz:

(a) Because the matters of fact set forth in such motions respectively, if true, are insufficient to warrant the relief sought by the motions.

(b) Because to grant the relief prayed by the motions respectively would be to continue in force and effect the intrastate order of the Interstate Commerce Commission which, by the opinion and judgment of this Court, has been condemned and ordered set aside.

(c) Because the motions respectively seek to lay the foundation for the entry in future proceedings before the Interstate Commerce Commission of a retroactive order superseding state rates now lawfully in force and effect.

(d) Because the relief sought by the motions re-

spectively is in its essence an injunction restraining the operation and effectiveness of purely state rates prior to and pending proceedings hereafter to be instituted and prosecuted before the proper administrative tribunal, attacking such state rates.

(e) Neither the United States of America nor the Interstate Commerce Commission has joined in the motions of the appellees or filed motions of any kind in this Court since the coming down of the opinion.

The foregoing grounds all involve substantially the same principles of law and so will be discussed together.

ARGUMENT.

NEW FACTS ASSERTED BY THE MOTIONS.

No new facts are alleged by the Motions except those in paragraph 4 of the Railroad Company's Motion (which is adopted by the Motion of the Georgia Public Service Commission). Those new facts show (if true) that since the unjustified and unjustifiable order of the Interstate Commerce Commission became effective certain of the appellant lumber companies ceased shipping logs over the lines of the Railroad Company, whereas others of them have continued to ship logs. Thus the motions illustrate the application of the principle laid down in the opinion of the Court in this case that "the raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it by discouraging patronage." This Florida Log Rate case aptly demonstrates the accuracy of the view of the Court expressed in the language just quoted.

THE EXISTENT JUDGMENT OF THIS COURT.

This Court in its opinion in these cases, in discussing the authority exercised by the Interstate Commerce Commission, said among other things:

> "The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of state power, *the justification of the exercise of the federal power must clearly appear.* (Italics ours.)

And this Court examined the order and report of the Interstate Commerce Commission and held, in effect, that the findings of the Commission were not such as to justify the exercise of the federal power and so declared that the order of the Interstate Commerce Commission with respect to intrastate rates must be set aside and reversed the decrees of the court below.

And so on January 5, 1931, pursuant to the opinion of this Court, a formal order was entered in each of the three cases in which, among other things

> "It is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby, reversed, and that the portion of the order of the Interstate Commerce Commission under review in this Court, with respect to intrastate rates, be set aside. * * *"

Then follows the portion of the order remanding the causes respectively to the District Court for fur-

ther proceedings in conformity with the opinion of this Court.

No petitions for rehearing have been filed by anyone.

THE EFFECT OF THE RELIEF SOUGHT BY THE MOTIONS.

What the Railroad Company and the Georgia Public Service Commission seek by the motions is to have this Court undo the thing which by its judgment it has done. They seek by an order of this Court to enforce within the domain of state power an order of the Interstate Commerce Commission condemned by this Court and which the judgment of this Court decreed be set aside.

The effect of the relief prayed, if granted, would be to enjoin (pending proceedings hereafter to be instituted and prosecuted before the Interstate Commerce Commission) the application of a state rate found by this Court in its opinion (page 7) to have been "maintained in intrastate commerce subject to the authority of the state and * * * published as required by its laws" and the injunction is not sought because the state rate is confiscatory but is based solely upon the opinion of the movants that at some future time the Interstate Commerce Commission will make findings and orders which will justify the exercise of the federal power within the domain of the state.

THE AUTHORITIES CITED BY THE MOVANTS.

The Movants cite Section 377 of Judicial Code, 1928 and three decisions of this Court in support of their

Motions. The cited section of the Statute and two of the decisions, to wit, *Ex Parte The Milwaukee Railroad Co.*, 5 Wall. 188, and *Watts, Watts & Co. v. Unione Austriaca,* 248 U. S. 9, 21, clearly have no application here. The cited sections of the statutes and those two decisions relate to the power of this Court to make orders *in the exercise of its appellate jurisdiction.* The thing in issue in the Court below and in the case at Bar was the validity of the order of the Interstate Commerce Commission invading state domain and prescribing state rates state-wide and without exception. This Court found that order not justified by the Commission's findings. It is obvious that neither the appellate jurisdiction of this Court nor the jurisdiction of the Court below comprehends jurisdiction to exercise *pendente lite* or otherwise administrative power to supply the essential findings (absent from the Commission's order) or to prescribe *pendente lite* or otherwise a rate for application in intrastate commerce. See *Mitchell Coal & C. Co. v. Pennsylvania R. Co.,* 230 U. S. 247, 255; *Kansas City S. R. Co. v. United States,* 231 U. S. 423, 439, 440; *Louisville & N. R. Co. v. United States,* 238 U. S. 1, 15, 16. The other case cited by Movants, *Smith v. Illinois Bell Telephone Co.,* decided December 1, 1930, U. S. Sup. Ct. Advance Opinions 1930-1931, Vol. 3, pages 99-112, likewise presents wholly different matters of law and fact.

The *Telephone case, supra,* was an appeal from a final decree of the District Court of the United States for the Northern District of Illinois enjoining the enforcement of an order by the Illinois Commerce Commission which prescribed rates for telephone service in the City of Chicago. The bill of complaint

attacked the order of the Illinois Commission upon the ground that the rates prescribed were confiscatory. An interlocutory decree enjoining the enforcement of the state order was entered and, on final decree, the interlocutory injunction was made permanent. This Court reversed the final decree and remanded the cause to the District Court for further consideration and, pending the further proceedings of the Court below, continued the *restraining order* entered in the suit by the Court below.

It is obvious that the Telephone case has no application here. The issue there was whether the rates were *confiscatory* and in violation of the due process clause of the Fourteenth Amendment. That issue was one which the courts alone could determine and not one in any wise committed to an administrative board or body of the federal government. This Court did not determine whether there had been a violation of the Fourteenth Amendment but remanded the cause to the Court below with directions to *that court* to make certain findings and apply certain rules in determining that issue. And the Court below, having entered *pendente lite* a temporary restraining order to be effective until the final determination of the suit, it was natural and fitting that this Court, having set aside the final decree for further proceedings on the merits, should continue in effect the temporary restraining order.

THE BOARD OF COMMISSIONERS OF NORTH DAKOTA V. GREAT NORTHERN RAILWAY CO., 281 U. S. 412, 74 L. ED. 936.

The *North Dakota case, supra,* would seem to be conclusive of the case at bar. There the appeal was

from an order of a United States District Court enjoining the enforcement of an order of the North Dakota State Board of Railroad Commissioners prescribing intrastate rates pending the determination by the Interstate Commerce Commission of the rates thus prescribed which caused an undue or unreasonable discrimination against interstate commerce.

The North Dakota Commission had made an order prescribing intrastate class rates. When that order was made there were then pending before the Interstate Commerce Commission two proceedings involving North Dakota intrastate class rates, the one the general investigation under the Congressional Joint Resolution of January 30, 1925 (43 Stat. L. 801, Chap. 120) in which the appellant Board was then cooperating, and the other a complaint filed before the Interstate Commerce Commission by the appellee carriers alleging that the new state rates would unjustly discriminate against persons and localities in interstate commerce and would constitute an unreasonable burden on interstate commerce in violation of Section 13 of the Interstate Commerce Act. The appellee carriers then instituted suit in the United States District Court and demanded and obtained an interlocutory injunction restraining the State Commission and officials from putting into effect the state rates until the Interstate Commerce Commission had determined in the pending or other appropriate proceeding before it the issue of unjust discrimination against interstate commerce. This Court on the appeal from the interlocutory injunction (p. 420) pointed out that there was no contention that the state rate was confiscatory and that the attack upon it was upon its alleged effect upon interstate commerce. This Court

then examined the laws of Congress and its own decisions respecting the exercise of federal power within the domain of the state, commencing with the *Minnesota Rate Cases,* 230 U. S. 352, and thence forward, and determined from them:

(a) That no attack upon a state rate can be maintained in the Courts upon the ground of interference with interstate commerce (pending proceedings by the Interstate Commerce Commission or otherwise) until appropriate findings and orders with respect to that state rate have been made by the Interstate Commerce Commission.

(b) That even the Interstate Commerce Commission has no power to suspend a state rate pending proceedings before that body or otherwise (Text 429-430).

In concluding its opinion in the *North Dakota case* this Court said (Text 430):

> "It is said that the interlocutory injunction, granted below, was in aid of the proceedings pending before the Interstate Commerce Commission. But the injunction necessarily has the effect of preventing the state from enforcing the rates it has prescribed, which are lawful rates until the Interstate Commerce Commission finds that they cause an unjust discrimination against interstate commerce. A judicial restraint of the enforcement of intrastate rates, although limited to the pendency of proceedings before the Interstate Commerce Commission, is none the less essentially a restraint upon the power of the state to establish rates for its internal commerce, a power the exercise of which in prescribing rates otherwise valid is not subject to interference upon

> the sole ground of injury to interstate commerce, save as Congress has validly provided. Congress has so provided only in the event that, after full hearing in which the state authorities may participate, the Interstate Commerce Commission finds that unjust discrimination is created. Congress forbids the unjust discrimination through the fixing of intrastate rates but entrusts the appropriate enforcement of its prohibition primarily to its administrative agency.
>
> "It is urged that the restraining power of the court is needed to prevent irreparable injury. But, in this class of cases, the question whether there is injury, and what the measures shall be to prevent it, is committed for its solution preliminarily to the Interstate Commerce Commission." Board of R. Comrs. v. Great Northern R. Co., 281 U. S. 412, 430.

And so this Court remanded the cause to the Court below with instructions to dismiss the Bill.

The principles of law laid down in the *North Dakota case, supra,* meet every problem presented by the Motions in the case at Bar.

CONCLUSION.

The thing attacked in the Court below and in this Court was not the State rate but the order of the Interstate Commerce Commission which invaded the domain of the State. This Court by its opinion and judgment has declared that the findings of the Commission fail to justify the invasion of State domain, and has adjudged and decreed that the Commission's order respecting intrastate rates be set aside. The judgment of this Court finally disposes of the order. What, if any, proceedings may hereafter be had before, or orders made by the Commission are matters within

the administrative discretion of the Interstate Commerce Commission "acting in accordance with the authority conferred by the statute," and are not within the province of the Courts. And while under the *North Dakota case, supra,* the pending of such proceedings before the Commission makes no difference, we may note in passing that no such proceedings are now pending and neither the United States nor the Interstate Commerce Commission has in any way indicated to this Court that such will be had.

For the reasons hereinabove set forth we are confident that this Court will not undo what it has done or continue by its mandate the unlawful order of the Commission and thus in effect enjoin the operation and effectiveness of the State Rate, found by the Court to be maintained subject to State authority.

Respectfully submitted,

For the Appellants in Nos. 16, 17, and 18.
STATE OF FLORIDA, ET AL.
BROOKS-SCANLON CORPORATION, ET AL.
WILSON LUMBER COMPANY OF FLORIDA.

FRED H. DAVIS,
T. T. TURNBULL,
HENRY P. ADAIR,
CHARLES E. COTTERILL,
AUGUST G. GUTHEIM,
H. PLANT OSBORNE,
J. V. NORMAN,
Solicitors.

January 26, 1931.

SUPREME COURT OF THE UNITED STATES.

Nos. 16, 17 and 18.—October Term, 1930.

The State of Florida, and A. S. Wells, E. S. Matthews, et al., etc., Appellants,
16 *vs.*
The United States of America, Interstate Commerce Commission, et al.

Brooks-Scanlon Corporation, Wilson Cypress Company, Cummer Cypress Company, Appellants,
17 *vs.*
The United States of America, Interstate Commerce Commission, et al.

Wilson Lumber Company of Florida, Appellant,
18 *vs.*
The United States of America, Interstate Commerce Commission, et al.

Appeals from the District Court of the United States for the Northern District of Georgia.

[January 5, 1931.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The State of Florida and the members of its Railroad Commission (appellants in No. 16) brought suit in the District Court to restrain the enforcement of that part of an order of the Interstate Commerce Commission which dealt with certain intrastate rates of the Atlantic Coast Line Railroad Company in Florida. The order, made August 2, 1928, required the Railroad Company to establish carload rates for logs (except walnut, cherry and cedar) in intrastate commerce "within the State of Florida" which should be the same as the rates prescribed by the Interstate Commerce Commission as reasonable for transportation in interstate commerce from points in the northern portion of Florida to destinations in Georgia. The order in that respect was assailed as

being outside the scope of the issues raised in the proceeding in which the order was entered and without substantial evidence to support it, and as extending beyond the statutory authority of the Commission and the limits of federal power under the Constitution.

Suits for similar relief were brought by the Brooks-Scanlon Corporation and other corporations (appellants in No. 17) and by the Wilson Lumber Company (appellant in No. 18), manufacturers and shippers of lumber in Florida. The Public Service Commission of Georgia was permitted to intervene, and the three suits were consolidated and heard before a court of three judges as required by the applicable statute.

The court was of the opinion that the order of the Commission touching intrastate rates could be construed as being limited to points of origin on the Atlantic Coast Line Railroad in the northern part of Florida, as the Commission had confined its order to these points of origin in fixing interstate rates. Taking the view that, if construed so as to apply to intrastate rates throughout the State, the order would probably be invalid, the court sustained it upon the narrower construction. Decrees were entered accordingly in January, 1929, dismissing the bills. 30 Fed. (2d) 116.

Thereupon the Interstate Commerce Commission amended its order by inserting additional exceptions of logs, and also with respect to intrastate rates, "for the purpose of clarification", by substituting for the phrase "within the State of Florida" the words "within and throughout the entire State of Florida, without exception." Petitions for rehearing and for leave to file supplemental bills were then presented to the District Court and were granted. The Atlantic Coast Line Railroad Company was allowed to intervene. On the rehearing, both the original and supplemental bills were dismissed. 31 Fed. (2d) 580. The court upheld the amended order of the Commission as to intrastate rates, in its statewide operation, not "because of undue prejudice to shippers and localities, or because of undue discrimination against the *particular* interstate commerce" in the described logs, but solely upon the ground that the order was aimed at a discrimination "against *general* interstate commerce", caused by intrastate rates which were so low as to throw an undue burden upon the interstate revenues of the carrier.

From the decrees entered accordingly the present appeals are brought.

The proceeding before the Interstate Commerce Commission was begun by the filing of a complaint by the Georgia Public Service Commission against the Atlantic Coast Line Railroad Company. The complaint stated that its object was to secure reasonable rates on logs from points on the Railroad Company's line within Florida to all destinations on its line in Georgia, and to remove any unjust discrimination found to exist as provided in the Interstate Commerce Act. The complaint alleged that there was competition between mills and consumers in Georgia and those in Florida in the purchase and transportation of logs from points in Florida to destinations in Georgia. The intrastate log rates of that railroad in Florida, and its interstate log rates between Florida and Georgia, for distances up to 170 miles were set forth, and it was alleged that the interstate rates greatly exceeded the intrastate rates for like distances upon traffic moving under substantially similar conditions. The complaint charged that the interstate rates were unjust and unreasonable in violation of section 1, were unjustly discriminatory in violation of section 2, and were unduly prejudicial to the interstate shipper and preferential in favor of the intrastate shipper in violation of section 3, of the Interstate Commerce Act. It was also charged that the carrier's intrastate rates in Florida gave unreasonable preference to intrastate shippers in that State and were unduly prejudicial to interstate shippers in Georgia, causing an unjust discrimination against interstate commerce in violation of section 13 of the Act. The complainants asked for an order requiring the Atlantic Coast Line Railroad Company to desist from the described violations of the Act, and prescribing just, reasonable, and non-discriminatory interstate rates to be charged by the defendant carrier for the transportation of carload shipments of logs from all Florida points to all destinations in Georgia, and that the measure of such rates should be no higher than those concurrently in effect for the same kind of property moving in intrastate commerce in Florida.

The State of Florida was notified of the proceeding, and the Florida Railroad Commission appeared in defense of the Florida intrastate rates. There were a number of intervenors, including shippers of logs in intrastate commerce in Florida, Georgia lumber

companies, and railroad companies operating in Florida and between Florida and Georgia, and all parties were fully heard.

In its report, the Interstate Commerce Commission stated that while the complainant assailed the rates from all Florida points, the record showed that, so far as interstate rates were concerned, relief was desired only with respect to the rates on logs "from that portion of Florida lying north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs," described as north Florida, "to destinations in Georgia for distances not exceeding 170 miles." The Commission pointed out that the Florida intrastate rates under attack were published for carload lots for 170 miles and less. The history of these rates was reviewed. With certain modifications and extensions, they were what was generally known as the "Cummer scale", which had originally been established by contract between a predecessor railroad company and a lumber company. This contract, the obligations of which were assumed by the Atlantic Coast Line Railroad Company, expired in 1918 and was not renewed. Meanwhile, in 1914, the Railroad Company had entered into a similar contract with the predecessor in interest of the intervener Brooks-Scanlon Corporation, and this contract was to continue in effect until certain timber, tributary to the line of the railroad, had been transported. Accordingly, the Railroad Company filed schedules with the Florida Railroad Commission extending the Cummer scale for described distances. The State Commission refused to permit the proposed rates to become effective because they were applicable only on trainloads and were not available to all shippers. That Commission further advised the Railroad Company that the rates were too low and such as might be deemed confiscatory. The rates were republished to apply on carloads over all of the Company's lines in Florida. These rates, extended with respect to distances and modified by certain increases and reductions, have been continued by the Railroad Company for the purpose of complying with its contractual obligations and not because it has considered the scale to be a proper one for general application on intrastate traffic within Florida.

While not admitting that the interstate rates were unreasonable, the Railroad Company submitted to the Interstate Commerce Commission a proposal for their revision. The Commission made a tabular comparison of the existing interstate and intrastate rates

and the proposed interstate rates from north Florida, and after a further statement of the evidence concluded that the interstate rates thus proposed were reasonable.

The Commission then made the following findings as to interstate and intrastate rates:

"We find that the interstate rates on logs, except walnut, cherry, and cedar, in carloads, from points on defendant's lines in Florida north of and including Jacksonville, Gainesville, Burnett's Lake, and High Springs, to destinations on its lines in Georgia for distances not exceeding 170 miles are, and for the future will be, unreasonable to the extent that they exceed, or may exceed, the following distance scale of rates in cents per 100 pounds, minimum weight 40,000 pounds, which rates we find are and will be reasonable;" (inserting schedule) . . .

"We further find that the Florida intrastate rates assailed, which are lower than the interstate rates herein found reasonable for corresponding distances, result, and will result, in undue preference and advantage of shippers of intrastate traffic within the State of Florida, in undue prejudice to shippers of interstate traffic from points in the State of Florida to points in the State of Georgia, and in unjust discrimination against interstate commerce.

"We further find that said undue preference and advantage, undue prejudice, and unjust discrimination can and should be removed by the establishment of rates for intrastate application within Florida which shall correspond with the rates herein found reasonable for interstate application from Florida to Georgia.

"We further find that whether the aforesaid rates pertain to transportation in interstate commerce or to transportation in intrastate commerce the transportation services in each instance are performed by defendant under substantially similar circumstances and conditions."

The order of the Commission, entered upon this report, after prescribing the interstate rates from northern Florida to Georgia, continued with respect to intrastate rates in Florida as follows:

"It is further ordered, That said defendant be, and it is hereby notified and required to cease and desist from practicing the undue preference and advantage, undue prejujdice, and unjust discrimination found in said report to exist in the relation of intrastate and interstate rates and to establish, put in force, and maintain rates for the transportation of logs, except walnut, cherry, and cedar, in carloads, minimum weight 40,000 pounds, in intrastate commerce within the State of Florida which shall be the same as those prescribed in the next preceding paragraph hereof as reason-

able for transportation in interstate commerce from points in the State of Florida to destinations in the State of Georgia."

This order, as already stated, was amended so as definitely to provide that the requirement as to intrastate rates should apply throughout the entire State of Florida, without exception. In making this amendment there was no further report or finding of the Commission.

We agree with the conclusion of the District Court that, on the facts that have been found by the Commission, the order with respect to intrastate rates in its statewide application cannot be sustained by reason of a proper determination of undue prejudice "as between persons or localities in intrastate commerce on the one hand and interstate . . commerce on the other hand." Interstate Commerce Act, sec. 13 (4). The limitation of the Commission's finding as to interstate rates, and of the order prescribing them, to transportation from points in the northern part of Florida to points in Georgia, defined the interstate commerce which was deemed to be concerned. All of this commerce was potential, no actual movement from Florida to Georgia having been shown. It would be an extreme and unwarranted assumption that to protect this interstate commerce from unjust discrimination as between persons or localities, it was necessary to alter the existing rates for the transportation of logs between all points whatever within Florida. Such a conclusion would not only require evidence to support it but findings of appropriate definiteness to express it. *Illinois Central Railroad Company* v. *State Public Utilities Commission,* 245 U. S. 493, 507, 508; *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Company,* 257 U. S. 563, 579, 580; *New York* v. *United States,* 257 U. S. 591, 600. The District Court, again examining the record upon the rehearing, reaffirmed its opinion that there was no such evidence, and it is sufficient on this appeal to observe that there are no findings of proper explicitness to that effect. Recognizing that the statewide order of the Commission as to intrastate rates was upheld only because the intrastate rates were deemed to be so low as to cause "undue discrimination against the carrier's general interstate commerce", the Government and the Commission have addressed their argument before this Court to the defense of the order upon that ground.

Dealing with the order in this aspect, we may briefly dismiss the appellants' preliminary objections in relation to the scope of the proceeding and the adequacy of the hearing before the Commission. As the Florida Railroad Commission appeared in defense of the intrastate rates, and the Railroad Company, the rates of which were in question, and other parties in interest, both shippers and carriers, were heard, the question now presented relates to the substance of the determination of the Commission and its support in the evidence rather than to mere matters of pleading and procedure. In making its order, the Commission could exercise all the authority conferred by the Interstate Commerce Act for the purpose of removing such unjust discrimination as was found to exist. If the Commission had made adequate findings supported by evidence upon the point under consideration, we should not be disposed to conclude that the order must be upset because of the manner in which the proceeding was initiated or of the generality of the allegations of the complaint.

Nor do we find that the order exceeds the authority of the Commission in the view that the intrastate rates under consideration were not "made or imposed" by authority of the State within the meaning of section 13 (3) of the Act. While the "Cummer scale" of rates was not prescribed by the Florida Railroad Commission and was not the result of any affirmative action on its part, these rates were maintained in intrastate commerce subject to the authority of the State and were published as required by its laws. These rates may thus be regarded as made by the authority of the State and within the purview of the Act unless its provisions disclose an intention to exclude intrastate rates of this sort. But it is clear that the fundamental purpose of the Congress in enacting section 13, subdivisions (3) and (4), was to reach intrastate rates that were found to result in unjust discrimination against interstate commerce. It was not the fact that the rate was affirmatively prescribed by the State, but that it was maintained as an intrastate rate, and as such was inimical to the proper interests of interstate commerce, that led the Congress to give to the Interstate Commerce Commission express authority to take cognizance of that rate and to prescribe the intrastate rate that should be charged thereafter in order to remove the undue discrimination. See *Board of Railroad Commissioners* v. *Great Northern Railway Company*, 281 U. S. 412, 424-428. The provision of section 13 (3) for notice to, and

conference with, the authorities of the State, is important not only where the rates have been prescribed by the State, but also where they are in force with the permission of the State and, as intrastate rates, would otherwise be subject to the jurisdiction of the State. To hold, as some of the appellants urge, that there can be no adjustment of intrastate rates by the Interstate Commerce Commission so far as may be needed to protect interstate commerce until the State itself has first "sat in judgment on the issue of the lawfulness of those intrastate rates" would be to impose a limitation not required by the terms of the statute and repugnant to the grant of authority.

The power of the Congress to authorize the Interstate Commerce Commission to establish intrastate rates in order to remove an unjust discrimination against interstate commerce is not open to dispute. *Houston, East & West Texas Railway Company* v. *United States,* 234 U. S. 342; *Illinois Central Railroad Company* v. *State Public Utilities Commission, supra; Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Company, supra; Arkansas Railroad Commission* v. *Chicago, Rock Island & Pacific Railroad Company,* 274 U. S. 597; *Alabama* v. *United States,* 279 U. S. 229. In the exercise of this power, the Congress has given to the Commission authority not only to remove an undue prejudice as between persons or localities, but to establish a statewide level of intrastate rates when this is found to be necessary to accomplish the purpose of the statute. In construing the statute this Court has held that the general provision of section 13 (4) prohibiting "unjust discrimination against interstate commerce" and authorizing the Commission to establish intrastate rates to prevent such discrimination, is to be read in connection with section 15a, both of which were added by Transportation Act, 1920 (secs. 416, 422, 41 Stat. 484, 488). There is what this Court has called a "dovetail relation" between the two provisions. The authority granted by section 13 (4) is thus to be considered in the light of the affirmative duty of the Commission to fix rates and to take other important steps to maintain an adequate national railway system.

As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic should pay "a fair proportionate share" of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Con-

gress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it. *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Company, supra; New York* v. *United States, supra* (pp. 585, 586).

The question in the present cases, then, is not one of authority, but of its appropriate exercise. The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear. *Illinois Central Railroad Company* v. *State Public Utilities Commission, supra.* The Commission has no general authority to regulate intrastate rates and the mere existence of a disparity between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates. *Arkansas Railroad Commission* v. *Chicago, Rock Island & Pacific Railway Company, supra.* If the action of the Commission is not simply for the removal of undue prejudice against interstate commerce as between persons or localities, and the Commission undertakes to prescribe a statewide level of intrastate rates in order to avoid an undue burden, from a revenue standpoint, upon the interstate carrier, there should be appropriate findings upon evidence to support an order directed to that end. Thus, in *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Company, supra* (at p. 566) where the question related to the general level of intrastate passenger fares, there were findings as to the effect of the maintenance of the intrastate fares upon the revenues of the carriers, warranting the ultimate finding of undue discrimination against interstate commerce as a whole. Similar facts were shown in *New York* v. *United States, supra* (at p. 601). In the present instance, the Commission did not undertake to establish a statewide level of rates for the interstate transportation of logs, and in order to sustain the statewide order as to intrastate rates (as one needed to avoid an undue burden on the revenues of the carrier and a consequent interference with the maintenance of an adequate transportation system) it must appear that there are findings, supported by evidence, of the essential facts as to the particular traffic and

revenue, and the effect of the intrastate rates, both as existing and as prescribed, upon the income of the carrier, which would justify that conclusion.

In the paragraph, which we have quoted, containing the ultimate finding of the Commission with respect to the unjust discrimination caused by the existing intrastate rates as between persons and localities, there is a concluding clause that the intrastate rates result "in unjust discrimination against interstate commerce". This general statement in the language of the statute, neither standing alone nor taken in its context, could be regarded as sufficient to support a statewide order from the standpoint of income, in the absence of supporting findings of fact as to the revenue from the traffic in question.

In its report, the Commission stated that the Florida Railroad Commission, and the interveners from that State, had contended that the intrastate rates were remunerative to the carrier. The State Commission introduced a cost study to support its contention, and the carrier also submitted evidence as to the cost of transporting logs on its line. The Interstate Commerce Commission said that both cost studies were based on "arbitrary assumptions" and that neither could be accepted "to show the approximate actual cost of transporting logs in single carloads intrastate throughout Florida." The Commission made a comparison of "present interstate and intrastate rates and the proposed interstate rates from north Florida in cents per 100 pounds, and the earnings thereunder per car of 50,000 pounds for distances to 170 miles." The "earnings" thus set forth were merely the amounts receivable per car for the given number of pounds under the rates for the prescribed distances. The Commission also stated that the carrier had shown that the earnings under the Florida intrastate rates on logs were materially lower than the earnings under the interstate rates from Florida to Georgia on brick, sand, lime and cement. Comparing the Florida intrastate rates on logs with other intrastate rates and with interstate rates, the Commission reached the conclusion that the intrastate rates assailed were less than reasonably compensatory.

But to justify the Commission in the alteration of intrastate rates, it was not enough for the Commission merely to find that the existing intrastate rates on the particular traffic were not remunera-

tive or reasonably compensatory. The authority to determine the reasonableness *per se* of intrastate rates lay with the state authorities and not with the Interstate Commerce Commission. In dealing with unjust discrimination as between persons and localities in relation to interstate commerce, the question is one of the relation of rates to each other. In considering the authority of the Commission to enter the state field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the relation of rates to income. The raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage.[1] *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Company, supra.* The Commission stated in its report that witnesses for the Florida interveners had testified "that any material increase in the Florida intrastate rates would either cause them to move their plants to the timber or abandon operations", and that in either event the carrier would lose considerable traffic.

The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service.

The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this Court has recently adverted (*The Beaumont, Sour Lake & Western Railway Company* v. *United States,* decided November 24, 1930, 282 U. S. —), but of the lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we

[1]In the Florida Fertilizer Case, 151 I. C. C. 602, the Interstate Commerce Commission, in refusing to order an increase in the Florida intrastate rates on fertilizer, said: "Furthermore, it is not certain that if the Florida intrastate rates were increased to the interstate level, additional revenue would accrue to the carriers, for if the prophesies of the interior plants and of the Florida commission are justified, practically all shipments would be made from the ports with the result that the total charges would probably be no greater than they now are."

are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported. If the facts as to intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination as against interstate commerce either as between persons and localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require.

We conclude that the portion of the order of the Commission which is now under review, with respect to intrastate rates, is not supported by the findings of the Commission and this part of the order must be set aside.

Decrees reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.